IN THE

DEC 31 1980

Supreme Court of the United States

October Term, 1980

No. 80-348

H.A. ARTISTS & ASSOCIATES, INC.; S.T.E. REPRESENTATION LTD.; J. MICHAEL BLOOM, LTD.; DON BUCHWALD & ASSOCIATES, INC.; MARJE FIELDS, INC.; HENDERSON/HOGAN AGENCY INC.; OPPENHEIM-CHRISTIE ASSOCIATES LTD.; JOEL PITT LTD.; TALENT REPRESENTATIVES INC.; D.M.I. TALENT ASSOCIATES, LTD.; JEAN THOMAS AGENCY, INC.; BOB WATERS AGENCY, INC.; JACOBSON-WILDER, INC.; WILLIAM D. CUNNINGHAM & ASSOCIATES, INC.; TRANUM ROBERTSON & HUGHES, INC.; MONTY SILVER AGENCY LTD.; BRET ADAMS, LIMITED; MICHAEL THOMAS AGENCY, INC.; LESTER LEWIS ASSOCIATES, INC.; LEAVERTON ASSOCIATES LTD.; JOE JORDAN TALENT AGENCY INC.; RAGLYN-SHAMSKY, LTD.; ANN WRIGHT REPRESENTATIVES INC.,

Petitioners,

v.

ACTORS' EQUITY ASSOCIATION, an unincorporated association, and DONALD GRODY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

CHARLES DONELAN, ESQ.
Bowditch & Dewey
311 Main Street
Worcester, Mass. 01608
(617) 791-3511

HOWARD BREINDEL, ESQ.
Solin & Breindel P.C.
530 Fifth Avenue
New York, New York 10036
(212) 221-3760
Counsel for Petitioners

JEROME B. LURIE, ESQ.
Cohn, Glickstein, Lurie, Ostrin,
Lubell & Lubell
1370 Avenue of the Americas
New York, New York 10019
(212) 757-4000
Counsel for Respondents

Petition for Certiorari Filed August 21, 1980
Certiorari Granted November 17, 1980

INDEX

	Page
Chronological List of Relevant Docket Entries. .	1
Petitioners' Complaint. . .	3
Respondents' Amended Answer.	30
Stipulated Facts Portion Of The Joint Pretrial Order Filed In The District Court.	47
Transcript Of Trial Proceedings:	
Trial Testimony Of Thelma Raider.	76
Trial Testimony Of Howard Hausman.	123
Trial Testimony Of Donald Grody.	127
Trial Testimony Of Robert Fishko.	143
Trial Testimony Of Mary Louise Britton.	147
Trial Testimony Of Barbara Lea.	152
Trial Testimony Of Theodore Bikel.	164
Trial Testimony Of Guy Pace.	173

Page

Trial Stipulations Of Counsel. 178

Transcripts Of Oral Depositions:

Deposition Testimony Of Randy Phillips. 183

Deposition Testimony Of Donald Grody. 191

Trial Exhibits:

Petitioners' Exhibit No. 3 - Letter Dated March 25, 1975. 195

Petitioners' Exhibit No. 5 - Minutes Of Meeting Of November 25, 1975. 206

Petitioners' Exhibit No. 67 - Letter Dated August 31, 1977. 207

Petitioners' Exhibit No. 71 - Letter Dated October 11, 1977. 209

Petitioners' Exhibit No. 72 - Letter Dated October 13, 1977. 245

Respondents' Exhibit K-1 - Exclusive Management Contract. 248

Respondents' Exhibit K-2 - Agency Authorization. . . 265

Respondents' Exhibit Q - Licensing Contract. . . 279

Page

Respondents' Exhibit AA - Excerpts From "The Revolt Of The Actors". . . 291

Opinion Of The District Court Denying Petitioners' Motion For A Preliminary Injunction Dated June 29, 1978. . . . . Pet.App.D1

Opinion Of The Court Of Appeals Affirming The Denial Of Petitioners' Motion For A Preliminary Injunction Dated November 9, 1979. . . . . Pet.App.C1

Opinion Of The District Court Dismissing Petitioners' Complaint Dated October 12, 1979. . . Pet.App.B1

Opinion Of The Court Of Appeals Affirming The Dismissal Of Petitioners' Complaint. 332

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

May 26, 1978 - Petitioners' complaint filed in the United States District Court For The Southern District Of New York.

May 31, 1978 - Petitioners' motion for a preliinary injunction filed in the District Court.

June 22, 1978 - Hearing in the District Court with respect to petitioners' motion for a preliminary injunction.

June 27, 1978 - Respondents' answer filed in the District Court.

June 29, 1978 - Order and Opinion of the District Court denying petitioners' motion for a preliminary injunction.

July 12, 1978 - Petitioners' notice of appeal to the United States Court Of Appeals For The Second Circuit from the Order and Opinion of the District Court denying petitioners' motion for a preliminary injunction filed.

November 22, 1978 - Respondents' amended answer filed.

November 9, 1978 - Order and Opinion of the Court Of Appeals affirming the Order and Opinion of the District Court denying petitioners' motion for a preliminary injunction.

May 24, 1979 - Joint Pre-trial Order filed in the District Court.

June 21, 25, 26, 28 and August 7 and September 28, 1979 - Trial of the action in the District Court.

October 24, 1979 - Opinion of the District Court dismissing petitioners' complaint.

October 29, 1979 - Judgment dismissing petitioners' complaint.

November 21, 1979 - Petitioners' notice of appeal from the October 24, 1979 Opinion of the District Court filed.

November 29, 1979 - Petitioners' amended notice of appeal from the October 29, 1979 Judgment of the District Court filed.

May 23, 1980 - Opinion of the Court of Appeals affirming the Opinion of the District Court dismissing petitioners' complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMPLAINT (78 CIV. 2452 (CBM))

Plaintiffs, for their complaint, allege as follows:

1. This action for injunctive relief arises out of defendants' violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2). This Court's jurisdiction over the subject matter of this action rests on Section 16 of the Clayton Act (15 U.S.C. §26).

2. Each defendant inhabits, maintains an office, transacts business, or may be found within the Southern District of New York. The interstate trade and commerce involved and affected by the hereinafter-mentioned violations of the antitrust laws has been and still is carried on in part within the Southern District of New York.

DEFINITIONS

3. As used herein the term:

A. "Equity" shall refer to defendant Actors Equity Association;

B. "Member" shall refer to a member of Equity;

C. "Actor" shall include actors, actresses, performers, entertainers, and anyone else who performs in live legitimate theatrical productions such as plays and revues;

D. "Theatrical agent" includes any person or entity engaged in the business of obtaining employment for actors in live legitimate theatrical productions and rendering related services to actors;

E. "Franchised agent" shall mean a theatrical agent who is franchised by Equity to perform services for members;

F. "Nonfranchised agent" shall mean a theatrical agent who is not franchised by Equity;

G. "Producer" shall include any person or entity engaged in the business of producing live legitimate theatrical productions on Broadway, off Broadway, at dinner theatres, in summer stock, at industrial shows and elsewhere.

PARTIES

4. Each plaintiff is a theatrical agent having a place of business and doing business in the city, county and state of New York.

5. At all relevant times, defendant Equity has been an unincorporated association, functioning in part as a labor union on behalf of those of its members who perform in legitimate theatrical productions, with its principal place of

business at 1500 Broadway, New York, New York. Since at least 1940, virtually all persons who have regularly performed in legitimate theatrical productions in the United States have been or become members of Equity and virtually all producers have been parties to collective bargaining agreements with Equity. Each plaintiff has a substantial number of clients who are members of Equity and who have performed in legitimate theatrical productions. At present, Equity has approximately 11,000 members.

6. Defendant Donald Grody has been and is the Executive Director of Equity. Upon information and belief, Mr. Grody resides in the city, state and county of New York.

CO-CONSPIRATORS

7. Persons not made defendants herein have participated as co-conspir-

ators with Equity in the offenses alleged in this complaint and performed acts and made statements in furtherance of said offenses. Such co-conspirators include, but are not limited to:

A. Theatrical Artists Representatives Association, Inc. ("TARA"). TARA is, and at all pertinent times has been, an association of theatrical agents;

B. All franchised agents;

C. All favored nonfranchised agents whom Equity allows to perform theatrical agency services without interference;

D. All producers whom Equity has coerced, threatened or attempted to coerce or threaten, to refuse to deal with nonfranchised agents or who have supplied Equity with the

identity of an agent representing a member:

TRADE AND COMMERCE

8. In the United States, there is and has been for many years a separate national market and various regional submarkets for legitimate theatrical productions. Such productions are performed in numerous cities throughout the country. The largest submarket exists in New York City, where such performances are presented on and off Broadway. Live theatrical performances have also been presented by summer stock groups, dinner theatres and have been sponsored by industrial corporations. Numerous persons travel over state lines to attend the foregoing legitimate theatrical productions and actors and companies of actors travel in interstate commerce to

perform in said productions. Plaintiffs and other theatrical agents obtain employment for their actor-clients throughout the United States.

9. From at least 1940 to the present, Equity has been a party to collective bargaining agreements with virtually all producers in the United States. Since at least 1960, Equity has entered into collective bargaining agreements with the following associations, which represent producers in the following fields:

Association	Field
League of New York Theatres	Broadway productions
League of Off-Broadway Theatres	Off-Broadway productions
Council of Stock Theatres	Non-resident stock dramati productions
Council of Resident Stock Theatres	Resident stock dramatic productions
League of Resident Theatres	Resident repertory theatre productions

American Dinner Theatre Institute	Dinner theatre productions
Musical Theatre Association	Indoor musical productions
Association of Civic Musical Theatres	Outdoor musical stock productions

10. Equity's collective bargaining agreements with the above-described associations of producers contain provisions, among others, to the following effect:

A. producers, with limited exceptions, agree only to employ actors who are or become members of Equity;

B. producers agree not to deal with agents who are not franchised by Equity in these precise or substantially similar terms:

> "The producer has notice that if the negotiation for, or the obtaining of, a contract by the Actor is through any employment agent or personal representative not holding a permit from Equity, or one whose permit is not in

> good standing, he is not only breaching the rules of Equity in employing the Actor under such condition, but is doing so with the knowledge that the Actor himself is liable for suspension or other disciplinary action by Equity and that he may thus be deprived of the Actor's services in this company";

The combination of these provisions and Equity's rules relating to agents and members endows Equity with the power to prevent and threaten prevention of, the performance of a legitimate theatrical production by a producer.

11. Theatrical agents have functioned and still do function as independent business entities. They bear substantial overhead for office space, employees, telephone services and other services and the economic risk of loss arising from the business of providing agency services to actors. Virtually all

of their revenues are derived from commissions in connection with employment they have obtained from their actor-clients. No commissions or other remuneration are received by the agents for their many unsuccessful attempts to obtain employment or for their consulting and related services rendered to actors.

12. The parties through their aforesaid national and interstate activities relating to the employment of actors in legitimate theatrical productions are engaged in interstate commerce. As such, they are responsible for a regular, continuous and substantial flow of invoices, bills, contracts, monies and people in interstate commerce.

THE ILLEGAL CONDUCT

13. Equity's membership consists of virtually all persons regularly employed

in legitimate theatre productions throughout the United States. Equity thus has virtually total control over the labor market for actors in legitimate theatre productions throughout the United States.

14. Equity has promulgated internal rules governing the conduct and discipline of its members. By virtue of its control over the labor market for actors in legitimate theatre productions, Equity has been able to enforce these rules by internal disciplinary procedures, which have in some cases resulted in fines, suspension, censure and expulsion of members from Equity.

15. Equity's internal rules prohibit members from employing, being serviced by, or paying commissions to non-franchised agents. Equity's franchise agreements with agents require the fran-

chised agents to adhere to Equity's rules. These rules comprehensively govern virtually all the terms and conditions pursuant to which a franchised agent can represent a member, including the maximum commission chargeable by, and payable to franchised agents.

16. In 1958, following meetings with TARA, Equity and TARA entered into a "sweetheart" agreement which purported to formulate the terms of a standard form franchise agreement binding all theatrical agents, as well as comprehensive rules regarding relations between theatrical agents and members known as "Equity Rules Governing Rule A" or as "Rule A". By the terems of Equity's standard form franchise agreement for theatrical agents, all of the terms of Rule A were incorporated by reference into the franchise agreement and were made binding upon the agents.

17. Rule A contains the following provisions, among others:

A. only franchised agents may represent members;

B. members may not be represented by nonfranchised agents;

C. the applications of TARA members and prior franchised agents as of June 4, 1958, for Equity franchises will be automatically granted. Other theatrical agents must pass Equity's formal application procedures;

D. Equity may waive compliance with its franchising requirements for theatrical agents it desires to favor and such a waiver unless otherwise stated is irrevocable;

E. the maximum commission rates franchised agents may charge

members, the duties of the agents to members, and the terms and conditions of contracts between agents and Equity members;

F. a contract between a franchised agent and a member is valid only so long as the agent is franchised (thus, if Equity disenfranchises an agent, for whatever reason, or the agent resigns his franchise, that agent's contracts with members atuomatically terminate);

G. all disputes between: any franchised agent and Equity; TARA and Equity; any franchised agent and an Equity member; must first be submitted to a joint Equity-TARA committee for settlement unless the agent objects in writing. In the event of an objection or if no set-

telment can be reached there is to be an arbitration in which Equity as an ex-offico party represents all actors and TARA as an ex-officio party represents all agents. If an agent objects to representation by TARA, TARA may nevertheless be represented at the arbitration proceedings;

H. Equity may invoke disciplinary proceedings against franchised agents which may result in franchise revocation or suspension, fines of up to $5000; and forfeiture of commissions owed to the agents;

I. franchised agents must pay initial and annual franchise fees to Equity;

J. franchised agents may not deal with producers who are on Equity's blacklist of producers (eu-

phemistically termed "the defaulting managers list of Equity");

K. franchised agents may not represent actors who are not or do not become members.

The provisions of Rule A are supplemented by: (1) the by-laws of Equity which subject a member who deals with a nonfranchised agent to expulsion from Equity; (2) the provisions in all collective bargaining agreements between Equity and the various producers groups or leagues referred to above in paragraph 10B.

18. Rule A as enforced and maintained by Equity has no legitimate labor objective or purpose and exists primarily to allow Equity:

A. to discriminate against plaintiffs and other nonfavored theatrical agents for the benefit of franchised agents and nonfranchised agents favored by Equity;

B. to totally, absolutely and arbitrarily regulate and dominate the manner in which theatrical agents conduct their business, despite the fact that these independant businesses are not employers of members, but rather obtain employment for them.

19. In 1977, plaintiffs and other agents determined that they would no longer continue to have the conduct of their business dominated and regulated by Equity and TARA. Accordingly, plaintiffs resigned their franchises in Equity and those plaintiffs who were members of TARA resigned from TARA because they could not in good conscience accept the terms and proposals for franchising of agents being negotiated by Equity and TARA.

20. Thereafter, in order to force nonfranchised agents, including plain-

tiffs, to become franchised, Equity organized and engaged in a group boycott by coercing and threatening producers and actors to refuse to deal with nonfranchised agents. The group boycott has been perpetrated, in part, by the dissemination of a blacklist dated December 27, 1977 to all producers and by agents of Equity threatening producers with deprivation of actors if they deal with a nonfranchised agent. In the cover letter accompanying the blacklist, Equity advised the producers, and sought their participation in the group boycott, as follows:

> "'The producer has notice if the negotiations for, or the obtaining of this contract, by the Actor is through any employment agent or personal representative not holding a permit from Equity, or one whose permit is not in good standing, he is not only breaching the rules of Equity in employing the Actor under such conditions, but is doing

so with the knowledge that the Actor himself is liable to suspension or other disciplinary action to Equity and that he may thus be deprived of the Actor's services in this company.'

None of these agents may represent Actors' Equity members except under certain special circumstances. We urge you, therefore, to contact the Equity office if any of the agents on the attached list are identified as the agent of record of any of your employees. We seek your cooperation in upholding your obligation to the Collective Bargaining Agreement in this regard." (Emphasis supplied)

21. In furtherance of the group boycott, Equity has threatened clients of nonfranchised agents with expulsion from Equity if they deal with a nonfranchised agent and has directed these clients to refuse to pay commissions owed to plaintiffs and others. Equity also requires the producers to advise Equity of the identity of each agent of any member that the producer may employ.

22. Each of the allegations in the foregoing paragraphs are incorporated by reference in each of the following claims as if set forth fully therein.

FIRST CLAIM

23. At all relevant times, and since prior to January 6, 1977, defendants and co-conspirators have unreasonably restrained trade in the interstate commerce of the rendering of services by theatrical agents to actors, in violation of Section 1 of the Sherman Act, by, among other things, combining, agreeing and/or conspiring:

A. to eliminate and destroy the business of plaintiffs and other nonfranchised agents who are not favored by Equity;

B. to diminish and eliminate competition between (1) plaintiffs and other nonfranchised agents who are not favored by Equity and (2) franchised agents and nonfranchised agents favored by Equity;

C. to discriminate against plaintiffs and other nonfranchised agents who are not favored by Equity;

D. to fix, stablize and maintain the maximum commissions theatrical agents may charge members and to control the other terms and conditions pursuant to which theatrical agents render services to members;

E. to eliminate price and nonprice competition between theatrical agents;

F. to deprive members of their free choice of theatrical agents;

G. to deprive producers of their free choice of theatrical agents and members;

H. to have Equity threaten to take, and to take disciplinary measures against members, who have entered into contracts or dealt with plaintiffs and other nonfranchised agents who are not favored by Equity;

I. to have Equity threaten producers with loss of services of its members if such producers employed members through plaintiffs and other nonfranchised agents who are not favored by Equity.

24. For the purpose of forming and effectuating the foregoing combinations, agreements and conspiracies, defendants and co-conspirators have done those things which, as hereinbefore charged,

they combined, agreed and consipired to do.

25. The foregoing combinations, conspiracies and agreements have had the following effects, among others:

A. competition between (1) plaintiffs and other nonfranchised agents who are not favored by Equity and (2) franchised agents and nonfranchised agents favored by Equity, has been diminished or eliminated;

B. plaintiffs and other nonfranchised agents who are not favored by Equity have been and are prevented from rendering services to members and face elimination from the business of rendering services as theatrical agents to members;

C. members have been denied the opportunity to select the theatrical agents of their choice to represent

them and have lost employement opportunities that would have otherwise been available to them;

D. producers have been prevented from using theatrical agents and members of their choice;

E. the maximum commission charged by theatrical agents have been fixed, stabilized and maintained as have the other terms and conditions pursuant to which theatrical agents render services to members;

F. producers and members have been threatened, coerced, and pressured to refuse to deal with plaintiffs and other nonfranchised agents who are not favored by Equity.

26. The restraints of trade alleged herein are unreasonable and not reasonably related to any legitimate labor-oriented objectives of Equity.

27. As a direct and proximate result of the foregoing restraints, plaintiffs have been and continue to be irreparably injured in their trade or business.

28. Plaintiffs have no adequate remedy at law.

SECOND CLAIM

29. All of the aforesaid acts and conduct of defendants and co-conspirators have constituted and continue to constitute an illegal monopolization, attempt to monopolize and combination and conspiracy to monopolize the trade and commerce of the business of procuring employment for actors in legitimate theatre productions and the rendering of related services in interstate commerce, in violation of Section 2 of the Sherman Act.

30. As a direct and proximate result of the aforesaid illegal acts and conduct of defendants and co-conspirators, plaintiffs have been irreparably injured in their business and property.

31. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs seek judgment against defendants:

A. preliminarily and permanently enjoining defendants from in any way interfering with plaintiffs attempting to or rendering of any services to any member or any producer, including but not limited to, threatening any producer or member with any disciplinary action.

B. awarding plaintiffs the reasonable costs and disbursements of this action, including attorneys' fees; and

C. granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 26, 1978

BOWDITCH & DEWEY

By /s/CHARLES DONELAN
A Member of the Firm
311 Main Street
Worcester, Mass. 01608
(617) 791-3511
Attorneys for Plaintiff

OF COUNSEL:

SOLIN & BREINDEL
530 Fifth Avenue
New York, New York 10036
(212) 221-3760

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Caption Omitted In Printing]

AMENDED ANSWER

Defendants Actors' Equity Association ("Equity") and Donald Grody ("Grody"), by their attorneys, Cohn, Glickstein, Lurie, Ostrin & Lubell, for their Amended Answer in this action state as follows:

1. Deny each and every allegation contained in paragraph 1 of the Complaint, except admit that plaintiffs purport to bring this action as an action to remedy alleged violations of Section 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2) and that plaintiffs purport to invoke the jurisdiction of this Court pursuant to Section 16 of the Clayton Act (15 U.S.C. §26).

2. Deny each and every allegation contained in paragraph 2 except to state that defendants lack knowledge or information sufficient to form a belief as to those allegations which pertain to plaintiffs' residence or location for the transaction of business within the Southern District of New York or elsewhere.

3. Admit that in paragraph 3 of the Complaint, plaintiffs purport to define what certain terms, as used in the Complaint, shall refer to, mean, or include.

4. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 4 of the Complaint, except admit that plaintiffs purport to be theatrical agents having a place of business and doing business in the City, County and State of New York.

5. Deny each and every allegation contained in paragraph 5 of the Complaint, and aver that Equity has at all relevant times been an unincorporated association functioning as a labor union on behalf of its members; that Equity currently has its principal place of business at 1500 Broadway, New York, New York; that since at least 1940, most persons who have regularly performed in legitimate theatre productions in the United States have been or become members of Equity; and that most producers have been parties to collective bargaining agreements with Equity. Defendants lack knowledge or information sufficient to form a belief as to the allegation that each plaintiff has a substantial number of clients who are members of Equity and who have performed in legitimate theatre productions.

6. Deny each and every allegation contained in paragraph 6 of the Complaint, except admit that Grody resides in the State of New York, and aver that Grody is Executive Secretary of Equity and resides inthe City of New Rochelle, in the County of Westchester.

7. Deny each and every allegation contained in paragraph 7 of the Complaint, except admit that the Theatrical Artists Representatives Association, Inc. ("TARA") is, and at all pertinent times has been, an association of theatrical agents.

8. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Complaint, except admit that legitimate theatrical performances are presented on and off Broadway in New York City, and that live theatrical performances have

been presented by summer stock groups and dinner theatres, that some persons travel over State lines to see legitimate theatrical productions, and that some actors travel over State lines to perform in legitimate theatrical productions.

9. Deny each and every allegation contained in paragraph 9 of the Complaint except admit that since at least 1960, Equity has entered into collective bargaining agreements with all of the associations enumerated in paragraph 9.

10. Deny each and every allegation contained in paragraph 10 of the Complaint except admit that Equity's collective bargaining agreements with the associations of producers listed in paragraph 10 of the Complaint require producers, with some exceptions, to employ actors who are or become Equity members and have contained the language quoted in

paragraph 10B, and aver that said language has never been interpreted or enforced by Equity to prohibit producers from dealing with non-franchised agents.

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Complaint.

13. Deny each and every allegation contained in paragraph 13 of the Complaint, except admit many persons regularly employed in legitimate theatre productions throughout the United States are members of Equity.

14. Deny each and every allegation contained in paragraph 14 of the Complaint, except aver that Equity, like all

labor unions, has rules governing the conduct of its members, and that Equity enforces these rules by internal disciplinary procedures.

15. Deny each and every allegation contained in paragraph 15 of the Complaint, except admit that Equity has rules and franchise agreements governing some of the terms and conditions pursuant to which a franchised agent can represent a member, including the maximum commissions chargeable, and that Equity's rules prohibit members from employing non-franchised agents, and aver that these rules and franchise agreements were created and operate to protect Equity members from exploitation and to prevent their negotiated minimum wages and working conditions from being invaded or destroyed, and further aver that rules and franchising agreements pertaining to theatrical

agents were first promulgated by Equity in 1928.

16. Deny each and every allegation contained in paragraph 16 of the Complaint, except admit that Equity promulgated Rule A in 1958 following discussions with TARA, and admit that the terms of Rule A are incorporated by reference into Equity's standard form franchise agreement for theatrical agents.

17. Deny each and every allegation contained in paragraph 17 of the Complaint, aver the Rule A contains provisions similar to some of the provisions alleged in paragraph 17, and refer to Rule A (attached to Donelan's affidavit in support of plaintiffs' motion for preliminary injunction) for the precise terms and provisions thereof.

18. Deny each and every allegation contained in paragraph 18 of the Complaint.

19. Deny each and every allegation contained in paragraph 19 of the Complaint, except admit that plaintiffs resigned their Equity franchises in 1977, and deny knowledge or information sufficient to form a belief as to the plaintiffs' motives or intentions for their resignations.

20. Deny each and every allegation contained in paragraph 20 of the Complaint except admit that on December 27, 1977, Harriet Slaughter, then Assistant Executive Secretary of Equity, sent a letter containing the language quoted in paragraph 20 of the Complaint to some managers.

21. Deny each and every allegation in paragraph 21 of the Complaint, except admit that Harriet Slaughter sent a letter, dated June 20, 1977, containing inter alia, an instruction to Equity mem

bers to withhold commissions from agents unless the agent and actor have executed and filed with Equity an Agency Authorization or Exclusive Management Contract, and admit that the standard Production Contract which producers are required to file with Equity contains a place for identification of the agent of record.

22. Deny each and every allegation contained in paragraphs 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

23. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND
AFFIMATIVE DEFENSE

24. The activities and operations of theatrical agents, including the com-

missions charged by them, have had and continue to have a direct and substantial effect on the minimum wage scales and working conditions negotiated by Equity on behalf of its members.

25. Theatrical agents representing Equity members are in an economic interrelationship with Equity's members affecting Equity's legitimate union interest in the wages and working conditions of its members.

26. Equity's agency franchising system was established and is maintained by Equity to regulate the relationship between agent and actor, in order to insure that agents render competent and ethical representation which does not undermine the minimum wages and conditions negotiated by Equity.

27. By reason of the foregoing, Equity's conduct in maintaining its

agency franchising system is immune from the federal antitrust laws pursuant to the labor exemption of §§6 and 20 of the Clayton Act (15 U.S.C. §17, 29 U.S.C. &52), and the Norris-LaGuardia Act (29 U.S.C. §§101-115).

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

28. Repeat and reallege the allegations contained in paragraphs 24 through 26, inclusive, of this Answer as if set forth in full herein.

29. Equity's agency franchising regulations and its enforcement thereof are intimately related to the wages and working conditions of Equity's members.

30. Equity's agency franchising regulations and its enforcement thereof do not have a potential for restraining competition in the market alleged in the Com-

plaint or any other alleged business market in ways that would not follow naturally from elimination of competition over wages and working conditions.

31. Equity's agency franchising regulations and its enforcement thereof do not give Equity control over the market alleged in the Complaint or any other alleged market beyond that necessary to further Equity's legitimate interest in maintaining the wages and protecting the working conditions of its members.

32. By reason of the foregoing, Equity's conduct in maintaining its agency franchising system is immune from the antitrust laws pursuant to the non-statutory labor exemption.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

33. Repeat and realleges the allegations contained in paragraphs 24 through

26, and 29 through 31, inclusive, of this Answer.

34. Equity's franchising system is based on reasonable and legitimate business concerns and, under all the circumstances, does not impose an unreasonable restraint on competition in violation of the antitrust laws.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

35. Plaintiffs are formerly franchised agents who had notice of and operated within Equity's franchising system for many years and nevertheless refrained from commencing this action until May 26, 1978.

36. By reason of the foregoing, plaintiffs are barred by laches from the relief sought in their Complaint.

AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE

37. Repeat and reallege the allegations contained in paragraph 34 of this Amended Answer as if set forth in full herein.

38. Plaintiffs were formerly members of TARA, which participated fully in the formulation of Rule A and its revisions.

39. Upon information and belief, each of the plaintiffs has participated since the commencement of his/her membership in TARA in the activities and involvement of TARA in connection with the formulation, revisions, and support of Rule A.

40. By reason of the foregoing, plaintiffs are estopped and barred from complaining of the agency franchising system embodied in Rule A.

AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE

41. The conduct complained of in the Complaint is the subject of unfair labor practice charges under the National Labor Relations Act, 29 U.S.C. §§151 et. seq.

42. By reason of the foregoing, the exclusive jurisdication of the National Labor Relations Board pre-empts and bars the granting of the relief sought in the Complaint.

AS AND FOR A EIGHTH
AFFIRMATIVE DEFENSE

43. Plaintiffs themselves have combined and conspired to fix the commissions which they charge to Equity members, in violation of Section 1 of the Sherman Act.

44. By reason of the foregoing, plaintiffs are barred by the doctrine of unclean hands from the relief sought in their complaint.

WHEREFORE, defendants demand judgment dismissing the Complaint herein and for such other and further relief as this Court deems just and proper, including the costs and disbrusements of this action.

Dated: New York, New York
October 19, 1978

Yours, etc.,

COHN, GLICKSTEIN, LURIE,
OSTRIN & LUBELL
Attorneys for Defendants
Office & P.O. Address
1370 Avenue of the Americas
New York, New York 10019
212 (757-4000)

By: /s/Mary K. O'Melveny
A Member of the Firm

STIPULATED FACTS PORTION
OF THE JOINT PRETRIAL
ORDER FILED IN
THE DISTRICT COURT

The parties stipulate to the truth and accuracy of the following facts for the purposes of this action only. All objections to admissibility of these facts are reserved for trial.

1. AEA is a labor organization representing actors in the legitimate theatre field throughout the United States. It has approximately 23,000 members. Donald Grody is Executive Secretary, the chief executive officer of AEA. AEA is governed by a Council, consisting of councillors elected by the membership.

2. AEA is the traditional theatre actors' union. Virtually all major New York producers, and most other major theatrical producers throughout the United States, have collective bargaining agreement with AEA.

3. AEA negotiates collective bargaining agreements with theatrical producers, who are the employers of AEA members. No agent participates in these negotiations.

4. These collective bargaining agreements prescribe minimum working conditions and salaries for members of the bargaining units represented by AEA.

5. Theatrical agents are independent contractors who, inter alia, negotiate contracts and solicit employment for their actor-clients.

6. Agents who operate in New York City are required to be licensed as employment agencies and regulated by the Department of Consumer Affairs of New York City pursuant to Article 11 of the General Business Law of the State of New York, which, inter alia, sets the maximum commissions employment agencies may

charge and has specific provisions dealing with theatrical agents.

7. Most or all plaintiffs are employment agencies licensed by the Department of Consumer Affairs of New York City pursuant to Article 11 of the General Business Law.

8. In 1928 AEA unilaterally established a licensing system for the regulation of agents.

9. Licensed agents were required, inter alia, to abide by a schedule of commissions established by AEA and to abide by other rules.

10. Since 1928, AEA members were required to deal only with agents who were licensed by AEA and were subject to discipline by AEA for dealing with agents who were not licensed.

11. From 1928 to the present, AEA's agency regulation system has contained

the same elements referred to in paragraphs 8, 9 and 10.

12. In the 1950's, the majority of agents franchised by AEA were members of TARA, a trade association of agents working in the legitimate theatre field.

13. Holding an AEA franchise was condition of membership in TARA.

14. Membership in TARA was not a condition to obtaining an AEA franchise.

15. Prior to 1958, AEA granted three types of franchises: Personal Representatives' Permits; Special Representatives' Permits; and Employment Representatives' Permits. An agent could apply for one or more permits, and the minimum terms and conditions of his relationship with his actor/clients, including the maximum commission which could be charged, depended on the permit(s) held as well as type and terms of

the employment contract negotiated with the producer.

16. In the 1950's discussions were held between AEA and TARA for the purpose of modifying the agency franchising system. As a result of the discussions, agency regulations known as "Rule A," effective June 4, 1958, were promulgated.

17. AEA required TARA members and other agents seeking to represent AEA members to become franchised by AEA, under Rule A.

18. The stated purpose of Rule A was "to regulate the dealings of its [AEA's] members with agents and artists' managers relating to employment and professional careers of actors in the legitimate theatre industry." Rule A provided, inter alia:

A. the maximum commission rates agents could charge members, the

duties of the agents to AEA members, and the terms and conditions of contracts between agents and AEA members. Maximum commission rates, varied in accordance with the type of agency contract, the type of employment contract, and the terms of the employment contract. Some commissions were permitted on minimum salaries, not exceeding 5% of earnings for the first ten weeks;

B. only agents franchised by AEA were permitted to represent its actor-members;

C. the existing permits of the three types referred to in paragraph 15 were terminated and a single franchise substituted;

D. an actor and agent could enter into one of three types of agency contracts: the Special Management

Contract; the Agency Authorization; and the Exclusive Management Contract. The Exclusive Management Contract, which had no analogue prior to Rule A, permitted an actor to terminate it if the agent did not obtain for him a specified amount of employment within specified time limits;

E. an actor could negotiate with an agent terms which were more, but no less, favorable to the actor than those contained in Rule A;

F. all agency contracts were required to be in writing with a copy filed with Equity;

G. a contract not in writing or properly executed could be voided at the option of the actor, and the agent had no right to commission under such voided contract;

H. an actor had the right to terminate an agency contract where the persons who were active in the agency when he signed his agency contract ceased to be active;

I. limitations on commissions were not to be avoided or evaded by any device or arrangement for payment to the agent of additional compensation;

J. an agent working on behalf of an employer (e.g., as a casting director) could not collect commissions from actors the agent placed while acting on behalf of the employer;

K. an agent working with a correspondent agent was not permitted to charge more than a single commission;

L. AEA agreed to grant new franchises to TARA members and other previously franchised agents, under the terms and conditions of Rule A;

M. applications for franchises by applicants who were not previously franchised were required to be accompanied by letters of reference from five AEA members in good standing. AEA's Council considered recommendations of the Agency Committee and made the final decision with respect to the granting of a franchise;

N. when AEA refused to grant a franchise, the applicant had recourse to arbitration;

O. franchised agents were required to pay initial and annual franchise fees to AEA;

P. agents were required to comply with certain provisions relating to ownership and control (e.g., prohibiting producers from owning a controlling interest in the agent);

Q. franchised agents were prohibited from dealing with producers on the defaulting managers' list of AEA, i.e. producers or managers whom AEA contends owe money to actors from a prior production;

R. AEA could waive compliance of its franchsing requirements for agents and such a waiver unless otherwise stated was irrevocable;

S. an attorney who performed services for a member of AEA was not deemed to be an agent unless such services included solicitation of employment in the legitimate theatre for the members, or the attorney

held himself out as an agent or engaged generally in the business of an agent;

T. disputes under Rule A between actor and agent(s), agent and AEA, or TARA and AEA were to be resolved by tri-partite arbitration under the auspices of the American Arbitration Association, where settlement attempts failed. Commissions subject to conflicting claims by two or more agents were required to be placed in escrow with AEA pending resolution of the dispute;

U. Equity could invoke disciplinary proceedings against agents which could result in franchise revocation or suspension, assessment of liquidated damages up to $5,000, and forfeiture of commissions;

V. Rule A was to remain in force at least until June 4, 1963, and thereafter until "terminated" by either TARA or AEA following six months prior written notice;

W. following termination of Rule A, agency contracts between a formerly franchised agent and an actor were to remain in force and the agent was to be deemed to be franchised with respect to such agency contracts only.

19. The relationship between actor and agent was set out in Rule A and in the standard form agency contracts issued by AEA.

20. AEA's by-laws subject an AEA member who deals with a non-franchised agent to discipline including fines, suspension or expulsion from AEA.

21. In about 1974, there was a series of meetings between TARA, AEA, and The League of New York Theatres, a trade association representing major New York City theatrical producers.

22. By letter dated March 25, 1975, from TARA President Robert Lantz to Grody, TARA requested discussions for the purpose of modifying Rule A and specifically, increasing maximum commissions.

23. In or about 1975, TARA and AEA commenced discussions with respect to modifications of Rule A.

24. During the discussions TARA gave six months' notice to "terminate" Rule A. The termination date was extended several times by mutual consent of TARA and AEA.

25. During the discussions, AEA submitted to TARA proposals which would have increased some commissions collect-

able by agents, although it did not meet TARA's demand for 10% "from the first dollar" - i.e. 10% on all monies earned, regardless of whether the actor's salary exceeded minimum.

26. During the discussions, AEA agreed to TARA's request that as part of any new agreement, AEA would enforce the provisions of Rule A prohibiting non-franchised agents from representing AEA members and AEA agreed.

27. The discussions were unsuccessful and on January 6, 1977 TARA terminated Rule A.

28. As a result, most or all TARA agents and some other agents were then unfranchised and were permitted to represent AEA members only under pre-existing agency contracts.

29. Many of the plaintiffs were members of TARA.

30. Rule A remained in effect for those agents who agreed to abide by it, and such agents were permitted to represent AEA members for all purposes.

31. On or about May 2, 1977, seven agents, including five who are plaintiffs herein, filed a lawsuit in the Federal District Court for the Southern District of New York, challenging AEA's agency franchising system under the anti-trust laws (Hidden, et al. v. Actors' Equity Association, et al., 77 Civ. 2624, (J.M.C.)). The complaint in that action requested a permanent injunction prohibiting AEA from enforcing the agency franchising system.

32. The lawsuit was initiated and financed by TARA, which solicited contributions from agents for this purpose.

33. Discussions between AEA and TARA continued while the lawsuit was pending.

34. The lawsuit was withdrawn without prejudice in or about August, 1977.

35. NATR, is a trade association of agents who represent actors in the legitimate theatre and other fields. NATR was in existence prior to August 1977.

36. All plaintiffs herein are NATR members.

37. By letter dated August 31, 1977, plaintiffs (with the exception of STE Representation Ltd. which is still a TARA member) advised AEA that they wished to be represented by NATR and that they "had resigned from TARA because they cannot in good conscience accept the terms and proposals being negotiated by Equity and TARA."

38. In or about October 1977, AEA and TARA agreed to new Equity Agency Regulations and many of the agents who were franchised prior to January 6, 1977 became refranchised by AEA.

39. The Equity Agency Regulations, inter alia, revised the schedule which regulated the commissions which franchised agents could charge and increased the franchise fees payable to AEA by agents.

40. With the exception of H.A. Artists & Associates, Inc., all or most plaintiffs have remained unfranchised since January 6, 1977.

41. Following the January 1977 termination of Rule A by TARA, AEA has communicated to actors, agents and producers concerning the "dispute" over the agency regulations.

42. In January 1977, AEA notified actors, agents and producers of TARA's termination of Rule A.

43. Since January 1977, AEA has advised its members and producers of discipline which could result to its members from dealing with non-franchised agents.

44. In letters to producers, AEA has quoted the following paragraph [2(A)] which has appeared for many years in the printed collective bargaining agreements between AEA and various producer groups:

> "The producer has notice that if the negotiation for, or the obtaining of, this contract by the Actor is through any employment agent or personal representative not holding a permit from Equity, or one whose permit is not in good standing, he is not only breaching the rules of Equity in employing the Actor under such condition but is doing so with the knowledge that the Actor himself is liable for suspension or other disciplinary action by Equity and that he may thus be deprived of the Actor's services in this company."

45. By letter of December 27, 1977, AEA advised producers of the identify of non-franchised agents and stated:

> "None of these agents [on the enclosed list] may represent Actors' Equity members except under cer-

> tain special circumstances. We urge you, therefore, to contact the Equity office if any of the agents on the attached list are identified as the agent of record to any of your employees. We seek your cooperation in upholding your obligation to the Collective Bargaining Agreement in this regard."

46. AEA advised its members that they were not obligated under Rule A to pay commissions for jobs obtained by agents with whom they did not have signed AEA agency contracts.

47. By letter dated June 20, 1977, AEA advised its members:

> "Up until this time Equity has advised all unsigned actors they are not obligated to pay commissions. As of June 15th you are instructed not to pay commissions."

48. Prior to the fall of 1977, the standard from individual employment contracts used under the "Production Contract" (the collective bargaining agree-

ment covering major Broadway plays) did not provide for the identification of the member's agent, if any, although some of the Union's other standard form employment contracts had long contained a place for identification of the agent of record, if any.

49. In late 1977 AEA issued a revised standard form individual employment contract for use under the Production Contract. Among other changes, it included a place for identification of the actor's agent of record, if any. By letter dated March 16, 1978, AEA wrote to producers in connection with the new forms:

> "Dear Producers:
>
> Please be advised that the new employment contracts for the Production contract are now available at the Equity office. We hope you are

now using these new contract forms.

* * *

May we call your attention to several changes in regard to these new contracts:

* * *

(d) A new line has been added for the agent of record. In this regard, may we remind you of your obligation under Rule 2(A), Agents, 'Permit Holding,' under the Agreement Governing Employment under the Production Contract..."

50. By letter dated June 27, 1978, AEA wrote to producers:

"...none of you is obliged under our contract to include the agent's name. We believe, however, that the inclusion of the agent's name is a valuable piece of information to appear on the contract, assists us in implementing our Agency Regulations and forecloses subsequent disputes between actors and agents. We therefore earnestly solicit that you will continue to include the name of the agent if

in fact an agent has represented our member. Naturally, whether you do or do not is entirely up to you."

51. By letter dated June 30, 1978, AEA wrote to producers:

"As you know, we have a provision in our Collective Bargaining Agreement, Rule 2(A), which deals with Equity's rules in connection with agents. As written, the Rule contains certain ambiguities. I am sure you are aware that it has never been our intention, nor have we ever tried, to impose what appears to be an obligation on producers to adhere to our Agency Regulations. Therefore we propose that Rule 2(A) be modified to accord with our practices and to read as follows:

The producer has notice that if the negotiations for, or the obtaining of this contract by the Actor is through any employment agent or personal representative not holding a permit from Equity, or one whose permit is not in good standing, the Actor is liable to suspension or

other disciplinary action."

52. Upon learning that an AEA member has been represented by an agent with whom the member does not have on file with AEA an agency authorization or management contract, AEA has sent the following form letter to the member, with a copy to the agent:

> "An employment contract has been received by Actors' Equity which names the above agent as the agent of record. It is imperative that you execute and file with Equity an Agency Authorization or Exclusive Management Contract in order to be validly represented by a franchised agent. The original agreement should be kept by you, a copy should be filed with Equity at once, and the third copy should be filed with the agent.
>
> Any agent who seeks to represent you without signing the proper contract could result in disciplinary action being taken against you.

> Some agents have refused to abide by Equity's Rules and Regulations Gonverning Agents and are operating outside out agency rules. It is important to protect the principal behind Equity's agency franchise system. Therefore, a proper agency contract must be in effect in order for Equity to properly administer the agency agreement between actors and agents."

53. By letter dated March 6, 1979, AEA advised its members:

> "It is an unfortunate fact of life that since January 6, 1977, the rules concerning the franchising of Agents and the representation of members by duly-franchised Agents have been muddied. Following our national referendum in March 1977, the group representing the largest number of Equity franchised Agents, Theatrical Artists' Representatives Association (TARA), agreed in October of 1977 to adhere to the regulations promulgated by Equity. It is understandable that a period of confusion followed, during which time Equity attempted to

clarify the new rules to Agents, as well as to our own members. The situation is further complicated by the emergence of a new group purporting to represent agents, the National Association of Talent Representatives (NATR). This group commenced a civil court action in the Federal District Court in May of 1978 in an effort to enjoin Equity from enforcing its Agency regulations. That suit is pending and we have every reason to believe that we will prevail.

Unfortunately, our successful defense will not require the 23 NATR Agents to adhere to our regulations governing Agents. That can be accomplished in only one way, through Equity members themselves. If the Equity Agency Regulations are to be meaningful, if the understandings we have reached with TARA are to have full force and effect, and if all Equity members are to be bound and protected by the rules, then we cannot permit <u>any</u> Equity member to violate the rules when it is to his own personal advantage.

Consequently, THE EQUITY COUNCIL HAS RESOLVED THAT, EFFECTIVE MONDAY, APRIL 2, 1979, EQUITY WILL STRONGLY ENFORCE ITS RULE THAT MEMBERS CANNOT SEEK OR ACCEPT REPRESENATATION BY NON-FRANCHISED AGENTS. This means that you are prohibited from dealing with non-franchised Agents in any of the following ways:

1. You may not sign a contract with a non-franchised Agent or enter into an oral understanding;

2. You may not be submitted for roles by a non-franchised Agent;

3. You may not permit a non-franchised Agent to negotiate a salary or any other contractual provisions (e.g., billing) for you;

4. You may not pay commissions to a non-franchised Agent.

Upon consideration of this matter, the Council indicated that violators would be subject to very substantial fines as well as possible suspension and expulsion from the Union. The Council discussion

noted that fines in the vicinity $1000 would not be inappropriate. This action has had to be taken because no other course is open to the Union."

54. By Letter dated May 8, 1979 AEA advised Lee Meredith, an AEA member:

"We are in receipt of information which indicates that you are in violation of the long-standing Equity Rule prohibiting members from dealing with agents who are not franchised by Equity for work in legitimate theatre. As you may be aware, our Agency Franchising system has been in effect since 1929.

In order to protect our membership at large, we are compelled to initiate disciplinary procedures against members, like yourself, who choose to disregard this rule."

55. Some franchised agents are members of TARA.

56. Some plaintiffs compete with members of TARA.

57. Plaintiffs have obtained AEA jobs for AEA members in New York, New Jersey, Pennsylvania, Connecticut, California and other states.

58. Franchise fees received by AEA are deposited in its general funds.

59. AFTRA and SAG, unions representing actors in the radio, television, and screen areas, both regulate talent agents. Most or all of the plaintiffs are franchised by both AFTRA and SAG. Many actors are members of AEA, SAG and AFTRA.

60. AFTRA prohibits commissions on scale. SAG prohibits commission on scale unless the membership votes, in local referendum, to permit it. The New York SAG local, allows agents to charge commissions on scale.

61. The agents' licensing agreement which is part of Defendants' Exhibit JX in American Federation of Musicians v. Car-

roll, 241 F.Supp. 865 (S.D.N.Y.) is exhibit Q to defendants' list of exhibits.

TRIAL TESTIMONY OF
THELMA RAIDER IN THE DISTRICT COURT

* * *

[65]Q Does Talent Representatives have employees?

A Yes, it has. We have a secretary and a subagent.

Q And yourself?

A Myself and my partner.

Q How many people who conduct agency services as such?

A Three.

Q Their names, besides yours?

A Steven Kaplan, my partner, Ruth Lehner, our subagent.

Q Is Talent Representatives -- is your talent agency, Talent Representatives, licensed by the State of New York?

A It is.

* * *

[74]A The thread was lost. However, I must say that it is the actors that I represent and the actresses who have told me that this is the kind of representation they want.

As you develop their career, you are doing more than just getting them a job, negotiating a contract. You are trying to develop an ongoing thing with them. You are trying to create a sense of confidence in that actor. You are trying to guide him in what is best for him to do to achieve the career he wants.

You are going to counsel him and you just cannot break that from one Union jurisdiction to another. It is -- the agent becomes a mother, a father, a [75] confidant, a sister, everything to that actor, if there is a good relationship between that agent and that actor.

Q In effectuating this representation of actors, what exactly do you do, directing your attention first to the attempt to find employment, what does an agent actually do, what actions does he take?

A Well, of course, the first action upon meeting an actor that wants you to represent him or you think you would like to represent, is to try and introduce him to the people in the industry that are going to be helpful in furthering his career.

We do that -- I do that by numerous telephone calls by sending out mailings on that actor, including pictures and resumes, sometimes tapes.

By arranging for the actor by appointment to meet casting directors or producers, or people in the area where they can give him employment.

I will entertain casting directors

or producers or writers and say, "I would like you to have lunch with me and meet John Doe."

I will go to dinner with these people. I will attend for them a lot of off-Broadway shows, a lot of workshop productions, a lot of productions that are going on in lofts or garages, because if my actors are appearing [76] there I want to see them.

If I see them, I want other people to see them. So it is just a constant thing. You do whatever it is you have to do, which is almost take up every area of the industry where this man or this woman is going to want to move ahead and do everything you can to make it easy for them to move ahead.

* * *

[84] Q What expenses does an agency have, a talent agency?

A Well, of course the basic ones, our representation, our telephone, postage, messenger service. Those are very large expenses, and a secretary. If you are a big agency, I guess you have more than one, but we have one secretary.

Then you have the expenses of the entertainment which is very necessary in this field. You have to entertain your clients because you cannot always have the kind of conversations they want to have with you in the office. The phone is ringing, other clients are walking in, and if they have a problem and they want your attention, is it out to dinner or out to lunch.

Another major expense is the entertainment of the producers and casting directors which I have mentioned before. You must pay for that. It is part of getting yourself known, it is part of getting

your clients known.

Then you must go to the showcase productions because that is the place you find new talent, and you must go to the off-Broadway productions because that is a place you find new talent.

In addition, of course, you are going to go to [85] Broadway productions because not only may you find a new client there, but also you will have your own client appearing in these productions. And you have the transportation expenses and you have the entertainment expenses of the tickets to these productions because nobody gives these to you for nothing. You have to pay for them.

And I remember when we first went into business, our first year or I think it was our second year, for some reason, we were lucky enough to get a number of our clients into Broadway productions.

But it was a bad year on Broadway. It seemed anything we got our clients in and they are primarily scale performers, because we're not a big agency. Elizabeth Taylor and Richard Burton do not need talent representatives.

So we would have these performers in these productions, they would go through rehearsal period, the show would open, we would buy tickets, we would send a telegram to an actor, we would send flowers to an actress on opening night, we would meet them after the show, take them out for a drink or a dinner and the show would close the next week or the second week and one day I was very happy because a client I liked a great deal got her first break and was going into a show and I said to my partner, Steve, [86] "Steve, so-and-so is going into the show," and he said to me, "One more

Broadway show and we're bankrupt."

Q All these things that you have told us about that you pay for, what income, how do you get your income as a talent agent?

A Commissions.

Q Just exactly what is a commission?

A A commission is a percentage of the salary that we negotiate for the actor. And that commission is regulated by New York State law. We can collect up to 10 percent. No more.

* * *

[88]Q Let's talk about commissions, Ms. Raider. You mentioned that New York State law has a ten percent limit. Are there other restrictions that you operated under when you were franchised by Equity?

A Yes.

Q What were they?

A The major restriction we operated un-

der when we were franchised by Equity, was a rule that said we could not collect commission on minimu.

Q Stop you right there. What is "minimum"?

A "Minimum" is the minimum wage a producer can pay to an actor in a production.

Q Where is this found?

A That is found in the collective bargaining agreement between the Union and the producers.

Q In the case of a Broadway production, who is the producer organization that negotiates the collective bargaining agreement with Equity?

A I believe it is the League of New York Theater Owners.

Q Does that have a minimum scale wage in it?

A Yes it does.

Q And how does that affect what you do?

[89]A I can under no conditions, nor can any client of mine, work, have him work -- I can under no conditions have any client of mine work for less than that minimum wage. It is impossible.

Q Why is it impossible?

A Because the rule is made between the Union and the producer that the producer cannot pay him any less than that money.

Q What do you call this regulation of the commission in Equity?

A That is Rule A.

Q Is that a written document?

A Yes, it is.

Q Does it have other provisions which govern what you, as an agent, may charge a member of Equity for your services?

A Yes, it does. There are a number of restrictions. Rule A is a book of restrictions on agents.

Q In negotiating for a job for a client

who is seeking a job that Equity produces, what are your objectives?

A My objectives are always to get as much money as I possibly can for that actor. I do not negotiate for minimum. I don't want minimum, which is that basic salary that the Union and the producers have evolved.

[90] Number one, the more money I make for an actor, the more money I make and that allows me to keep my doors open. But very often, no matter how hard I try, especially with a beginning actor or one who has not achieved any sense of notoriety, I cannot get above minimum.

One of the reasons I can't get above minimum, is that there are so many actors in New York who are unemployed and who are anxious to work. That is very true. Producers know this.

So my hands are pretty much tied if I

have an actor who has no track record. When I say to the producer, "Well, I mean, you know, you just can't pay him $350. We have to have $450 or $500, and he wonderful and he is this," and the producer will say to me, "This is a scale job. Your actor doesn't want to do it, there are ten others who will."

And I will say to my actor, "Look, no matter what I say or no matter how hard I try, this is a scale job. We can wait and try to get something better. I think you are worth more than scale." And I have put in all the time with the entertaining and the messengers and going to see and counseling him on how to dress or how to cut his hair and he will say to me, "I don't care if it is scale, I want that job." And I say, "Fine." And I still [91] go in there and I still negotiate for the billing and I still try to

negotiate the best contract I can for him and when it is all over, I can collect nothing.

Q You mentioned "billings."

What did you mean by that?

A "Billing" is where the actor's name appears on the program and on the house boards, the size of his name, the type, whether it is above -- with my clients it has never been above the title, but how large it is and all the areas where that actor's name is going to be shown that gives him again, standing.

It proves he has been in a Broadway or off-Broadway production. It is very important.

Q Is above the title better than below the title?

A Yes, that is a star. Elizabeth Taylor is above the title.

Q How many actors do you represent right now who normally are billed above the

title?

A Normally, none.

Q Are there other things which you negotiate for?

A Excuse me one second. You said "normally." I do have, I believe it was, two actors, but that is because they have a name and a reputation in television, not the [92] legitimate theater per se, but because they were in legitimate theater productions they were billed above the title. Sixteen years I thought that was good.

Q Are there other things that you seek in your negotiations for an actor from a producer?

A Oh, well, you seek dressing rooms and you seek for transportation, and if it is a production that is out of town, you know, you question the housing. You seek out clauses, which is a clause in a con-

tract that will allow the actor out of a production should perhaps, somebody from Hollywood see him and think he would be right for a series or a movie.

You are also aware from the moment you get somebody into any kind of production that that is not the end of the career. Your work begins when an actor gets into a production because that is the time he is visible. That is the time you can make other producers come and see him, other casting directors witness what he can do.

It is the time to build him up. It is the time to move him ahead. It is the time you do your hardest work.

Q What is this "out clause" that you mention?

A As I said, it is a clause in the contract that [93] allows your client to be released in a certain number of weeks' notice in order to do something else that

may further his career, or something else that he very much wants to do, even though it might not further the career.

* * *

[94]Q What services do you perform when that show is beginning and your client is out of town?

A Well, hopefully, our services start while they are still in town, when the client has been hired, and usually there is a rehearsal in New York. And you make sure each day or your client will call you each day, to let you know how things are going and to raise any questions that he might have about what his part was in this play, et cetera.

[95] You counsel him constantly because it is a nervous time for a client when he is just starting out in a show. Then we have gotten through that time and the client goes out of town, and you will get a call long-distance, collect. And he will

tell you that this has gone wrong or that has gone wrong and what can you do about it?

So then you again get in touch with the producer or do all those things you have to do and he says "When are you coming out to see me?"

And I usually try and say "Well, I very much want to see you. Do you need it this week or can you wait until maybe you come to Chicago?"

Simply because maybe this week I have a kid graduating from school or something.

And if it can be Chicago, I then fly out to Chicago and I see the production in Chicago, and then I fly back.

They may have gone from Chicago to Atlanta and in Atlanta something has happened that I have no control over and well maybe they have replaced another person in the cast and you get a phone call that

says, "Honey, I think you should come and see the show down here. I think it is a different show and I want you to really tell me what you think." Or while they are on the road, any number [96] of things happen.

But what you are going constantly is you are in touch with your client. Your client calls you, your client writes to you and you must take care of every matter, sometimes even including his apartment.

I have even been asked to rent an apartment while a client is on the road and you do it because he is your client.

Q Who pays for that plane ticket to Chicago and back?

A I do.

Q And who pays for all the phone calls?

A I do.

Q Do you ever hear from anyone other than the actor when he is on the road?

A Oh, yes.

Q Who is that?

A We sometimes hear from the producer. We sometimes hear from the director.

Q Why would you hear from the producer? What is that problem?

A Well, that can sometimes be there can be a misunderstanding or something going on on the stage or during the tryout and you get a call that says, "I think [97] you had better talk to your actor because this and this and this has happened and I think it would be a very good idea if you spoke to him.

"But you had better do it if you want your actor to keep that job."

Very often when you get a call from the actor and you have to call the producer, you are in a very difficult position because that may be the very same producer you are negotiating with on another show or for another client and here you are be-

coming the heavy.

You are complaining, you are fighting for your client's rights, and this producer is just two hours from talking to you about some money on another one of your clients and if he gets angry enough, you get this feeling, "Well, who needs to deal with her? She is nothing but trouble."

Q Again, dealing with Equity, is the rehearsal pay when the show is out of town that the actor receives, do you get any commission on that pay?

A No, we do not.

Q Do you have or have you on occasion, negotiated out of town expenses for an actor as part of his contract?

A Yes.

[98] Do you receive commissions on that?

A No, we do not.

Q Has it ever occurred that one of your actors, one of your clients, is dropped from a show while it is still out of town?

A. It has happened.

Q How much he paid you in commission when he is dropped?

A Nothing.

Q Moving along in the cycle, is there a time when a show begins to show out of town when an actor has pay from which you are able to collect a commission?

A If it is above scale I am able to collect.

Q Would you explain exactly what you just said?

A As we went back, if it is a client whose a new client and is only -- and only capable of earning scale as his wage and wants to do that production, even when the show opens and he is collecting full salary which is $500, I believe, $35 out of town now, we are not allowed to collect any money.

And I think the thing that is so bothersome to me, the reason I am here, is

that $535 or even $350 or $400, is not a minimum wage. I don't make that money at all.[99] THE COURT: What is not a minimum wage?

THE WITNESS: $535 to my mind is not a minimum wage. Yet that is a minimum wage to an actor on the road.

THE COURT: He has to get at least that under the Actors Equity contract you are saying?

THE WITNESS: Yes.

THE COURT: When he is on the road, he has to get $535?

THE WITNESS: I believe it is 35.

THE COURT: 535 a week?

THE WITNESS: Yes.

Q And for which under Equity rules, how much commission comes to you?

A Nothing.

THE COURT: Let me see if I understand this: That minimum has been set as a result of negotiation by Actors Equity with

the producers' group, is that it?

MR. DONELAN: Exactly, your Honor.

THE COURT: Those minimums.

What about the other conditions of employment, have those also been set, minimum conditions of employment?

MR. DONELAN: Yes, Your Honor. We have the collective bargaining agreements in the entire text here as plaintiffs' exhibits, and intend to have these identified [100] so the Court will have them.

But I think the Court has already in essence, gotten really all you need out of them, which is yes, all the terms and conditions right there in the collective bargaining agreement, and they have, by "they," the defendants have agreed in the stipulated facts, that no actor, no agent, no producer can diminish the minimums called for in the collective bargaining agreement.

THE COURT: I am talking about other

than the salary.

These other minimum conditions have been negotiated by the union?

MR. DONELAN: I am not sure which minimum conditions you are talking about, your Honor.

THE COURT: That is what I was getting at. In addition to a minimum salary which must be paid if you work in New York.

MR. DONELAN: Yes, your Honor.

THE COURT: It is 535 if you are on the road.

* * *

[127]Q By "call the rule," does that mean you terminated their relationship with Equity?

A I suppose on a general basis we terminated our relationship with Equity and at that moment technically we were unfranchised, or disenfranchised.

Q Why did you take that decision?

A Well, because it seemed -- it seemed

the situation was getting worse. I was being -- I felt -- forced out of business. I was being asked to work for nothing, and if I have to work for nothing I really can't keep my agency going.

Q What do you mean "work for nothing"?

A Well, the rules as they exist say that I cannot collect a commission on scale employment and since I don't represent major stars or that many people that command over scale, no matter how hard I try to get it, the bulk of my clients who are beginners, who are people moving along in their careers, can't command more than scale, so basically if I wish to work in the Equity field, and it is important for me to work in the Equity field if I want to represent [128] clients totally, I must work for nothing. I must put in the time and the effort and the energy, the same amount or more than would go into somebody who is recognized, and not get anything in re-

turn, even when I get them a job.

Q Were there other features of the Rule A which you objected to when you terminated your franchise in 1977?

A Yes, indeed. Aside from working for nothing, there is the one-year limit on a contract. If you get a new performer who comes to you for representation, you are only allowed to sign him or her for one year.

In that one year you can really start the career going perhaps, at least you might make them known, but at the end of the year they have the right to break that contract with you and go to another agent.

It may just be at the point where the career is going to break and you are out.

The one year rule isn't fully a year rule either. It isn't a one year guaranteed, because there is a 90 day clause under Rule A, and if you don't get a client work in 90 days where he is paid he

has the right to break his contract with you, too.

Getting him work is literally getting him work. It doesn't matter how many auditions you've sent him [129] out on or what promotion you've done or the jobs he's failed to get, he actually must be paid. If he's not he can call the 90 day rule and your client is gone, if he so desires.

Q Were there any other features of Rule A to which you objected?

A Well, I object generally to having an outsider run my business. The union has a collective bargaining agreement with the producers that take care of their actors.

I am employed by the actor. I mean, I don't work for the union and I don't work for the actor -- for the producer.

I work for the actor. He comes to me for his services. He comes to me the way

he would come to an accountant, the way he would come to a lawyer or a dentist. He wants my services. I think he has that choice.

Yet, it is an outside force that is telling me how I can deal with that actor. It's not a one-to-one decision and I am not free, as any other businesswoman in the country is free, to run my business as I see fit under the laws of the country or the state.

Q Mrs. Raider, did you say this at TARA meeting?

A I sure did.

[130]Q Did there come a time when you became dissatisfied with the TARA negotiators?

A Yes.

Q When was that?

A I would say that was in, what, well, around 1977 going into '78.

Q Who were these negotiators

you are discussing?

A The same group that I mentioned before -- may I go back? I also felt personally that the TARA negotiating group was headed by Howard Hausman, who is a fine man, but Howard Hausman was not speaking for the smaller agents.

Howard Hausman, I believed, was speaking for the large agencies. It's part of his job, I presume.

When I say that the negotiating team, after having been told by the membership, the general membership, that we could no longer live under these rules, we had to get commission on scale, we had to make some headway with this union, Howard would go and we would hear there were private meetings and he would always come back and say, "Well, you can't do this and you can't do that, you can't do the third thing." And I believe that you have to try.

So I became terribly pessimistic about my [131] chances of continuing in business and staying in a group where my views were not being expressed. I had to get out. It was a matter of principle.

Q Did others get out at that time?

A Yes, indeed.

Q Who were they?

A They were the smaller agents, some of the plaintiffs in this lawsuit, plus others.

I really can't tell you how many got out. I know the ones that are members of NATR, but I do not know how many others could not stand it.

* * *

[133] Q Have you ever heard of a pink contract?

A A pink contract is a chorus contract.

Q Was there anything about chorus contracts to which you objected when you were negotiating or talking about negotiating with Equity?

A It is not the chorus contract that I object to per se. What I object to is in Equity the pink contract, which applies to chorus members, does not ordinarily affect me because I don't represent chorus members. Chorus members traditionally don't have agents because they do not pay commission and they go from show to show more or less on their own.

A white contract is a principal contract and a principal contract is one in which you can negotiate for as much as you can get above minimum wage.

Very often, if you are lucky, you will get [134] more than minimum wage for an actor.

If an actor goes into a production on a white contract as a principal, Equity has the right unilaterally, by its own decision, to say, "Well, now, that person really is not a principal role. It's

really a chorus part." And they can unilaterally convert the white contract to the pink contract.

Your actor keeps the negotiated amount of money. He gets the benefit of the dollars that you negotiated. He does not go back to minimum salary but you are not allowed to collect a commission on a pink contract.

In one instance -- I'm going to go back about nine years -- I had a client in an industrial show, a show, a musical that was promoting automobiles, and it was touring.

As I remember -- I don't remember what the minimum was, but my client was well above the minimum and he was collecting $400 a week, which was very good money in those days.

After the second week that the show was running, an Equity deputy saw the show and said my client was not a principal player,

he was a chorus player. They converted the contract to the pink contract, and I had [135] to return the money I had collected the week he had played as a principal and could not collect any more -- it was an eight-week tour -- could not collect another penny on that contract even though my client continued to receive well over minimum. That is why I object to the conversion of pink to white -- white to pink

[136]Q Mrs. Raider, do you recall exactly when you resigned from TARA?

A No. Not the exact date.

MR. DONELAN: Plaintiff's Exhibit 67.

Q Let me ask you if that document refreshes your recollection, yes or no, as to when you resigned from TARA?

(Pause.)

A August 31, 1977.

Q August 31, 1977 Talent Representatives, your agency, resigned from TARA for the

reasons that you have just stated; is that correct?

A That's correct.

Q Were there others who resigned at that time?

A Yes, many others. There is a list of agents there.

Q After you resigned from TARA, what happened to your working every day with Equity members?

A Well, after we resigned from TARA we started getting letters from Equity telling us that we were no longer franchised agents, we could not represent their clients, please be aware that our clients would be in violations of the rules, and so on and so forth.

What happened was, there was a barrage of [137] threats. First, very mild. But they started to get stronger and stronger.

We found, after we resigned from TARA,

that the most horrible thing that happened was that we were put on a blacklist to producers. And since the most important thing we have going for us in this business are our reputations and our rapport with producers, this was an extraordinarily damaging thing. Your name appearing on a blacklist, be it valid or invalid, leads people to question, why are you there, you know, you must have done something wrong.

Our clients, indeed, were also shaken because here they have confidence in their agent and trust, and all of a sudden they are aware that their agent, whom they have liked and respected, again, is on a list. And it is damaging. It is damaging to your relationship with clients. It is damaging in the most insidious way, because there is nothing you can say to a blacklist, except explain it; which takes a lot of time. And it's difficult

to explain something in this situation.

Q These letters that you got, let's make sure we have the sequence correct on this record.

Prior to the publication of this blacklist [138] did you receive letters from Equity concerning your status as a non-franchised agent?

A As I remember, we did not receive any letters from Equity until we resigned from TARA.

Q After you resigned from TARA you received these letters that you have been talking about; is that right?

A Yes. And also copies of letters to our clients. Not only letters directly to us, but letters to our clients.

Q Who signed the letters to you, an agent from Equity?

A I believe it was Harriet Slaughter.

Q Who is Harriet Slaughter?

A I don't know her exact title. I think she was assistant to Don Grody.

Q Were these letters on the Equity letterhead?

A Yes, they were.

Q Did you see a copy of the blacklist letter?

A Yes, I did.

Q Was that on the Equity letterhead?

A Yes, it was, as I remember.

* * *

[170]Q You stated on your direct examination that there were three persons in your office who act as agents; is that right?

A Correct

Q How many of them work in the Equity field?

A I work in the Equity field primarily; my partner Steve Kaplan has worked in the Equity field; Ruth Lehner does not.

Q In 1978 how many jobs did you obtain for clients in the Equity field, you or your agency?

A I don't remember.

Q Was it more than three?

A I think possibly more. It might have been more like five. I'm not sure in '78, but I would say between three and five.

Q Who were those actors?

A I believe Tony Craig was one actor. I'm not sure of dates, there was -- Lanie Norton in Angel.

Q So you did get the job for Lanie Norton in Angel?

A Yes.

Q Were you paid commissions on it?

[171]A Yes, I was.

Q Did you negotiate over scale or scale for that role?

A Over scale.

Q How about Tony Craig?

A Well over scale.

[172] Q You said there were approximately between three and five --

A If I remember the year. Barbara Rodell, possibly Donald May. I am really not sure of the year, Miss Bases.

Q What job did you get for Barbara Rodell?

A She did a production of Two For The Seesaw at the Fishkill Playhouse, with Donald May.

Q Did you get those actors over scale?

A Yes, I did. There was also Forrest Compton in Sleuth, again, Fishkill Playhouse.

Q Did you get him over scale?

A Yes.

Q Turning your attention to 1977, approximately how many jobs in the legitimate theatre field did you obtain for your clients?

A I don't remember. And I want to state clearly, some of these jobs may have been

'77; I'm not good on the years.

Q Was it about the same number as in 1978?

A I have a feeling that probably '77 was more.

Q How about 1976?

A I don't remember.

Q Again, was it more or the same?

[173] A. I don't remember.

Q When was the last time you went to see a client in a legitimate theatre production on the road, outside of New York?

A The very last time was June or July of 1978. I believe it was Tony Craig at the Pocono Playhouse, doing Barefoot In The Park.

Q When was the time before that?

A Fishkill, New York; four or five trips to Fishkill for both Two For The Seesaw and Sleuth.

Q When was that?

A Well, I said I'm not sure. Probably

'77.

Q When was the time before that?

A Oh, I don't remember.

Q Were there any other times in 1977?

A I can't pinpoint the year. I can't say.

Q Which of your clients have you negotiated only scale for in the Equity field?

MR. DONELAN: I wonder if we could have any kind of time frame on that, your Honor.

Q When was the last time you negotiated scale for a client in the Equity field?

A Mel Cobb, in Semmelweis, a Kennedy Center production.

[174]Q When was that?

A '78.

Q When was the time before that?

A I can't remember. I know that they exist, but I can't remember specifically when and who.

Q When was the last time you went to Chicago to see a client in a legitimate theatre production?

A I haven't been to Chicago in years.

Q How about Atlanta?

A I have never been to Atlanta.

* * *

[180] Q Mrs. Raider, you stated that you have no written agreement between the actors you represent in the legitimate theatre field and your agency with respect to the relationship between the actor and your agency since you have ceased abiding by the Equity regulation; is that correct?

A Correct.

Q Are you aware of Article 11 of the General Business Law of the State of New York?

A I am aware of it, yes.

Q Have you read it?

A Not thoroughly, no.

Q When is the last time you read it, even not thoroughly?

A Not thoroughly, when we were licensed and received all this information.

Q This was in 1964?

A 1964.

Q Are you aware that the New York General Business Law requires you to have a contract with or [181] furnish a written statement to an actor for whom you obtain work, setting forth, among other things: the commissions which you charge?

MR. DONELAN: Objection, your Honor. It calls for a legal conclusion. The statute is for the Court to decide what it means.

THE COURT: Let me hear the question, Mr. Reporter.

(Question read.)

THE COURT: The question is whether the witness is aware of that?

MS. BASES: Yes, your Honor.

THE COURT: She can answer that. That doesn't call for a legal conclusion. Only ask the witness to tell us whether she is aware of it.

A Yes, I am aware of it.

Q What have you done to comply with this?

A Well, the terms of the employment are clearly stated on the contract between the actor and the producer.

Q What about the terms of the commissions which you charge?

A The terms of the commissions which I charge have been discussed with the actor verbally and a record of the commission is kept on a card in my file in the [185) office.

Q Is there anything you give the actor at the time you are making your verbal agreement with him or her which states the commission you will charge for the employment you procure for that actor?

A No, there is not.

Q You stated on direct examination that after being signed to your agency for one year which is the maximum allowed by Actors Equity Association under its agency regulations, clients often will go to one of the giants; is that correct?

A That is correct.

Q Who are the giants you are referring to?

A William Morris and ICM.

Q When is the last time you had a client signed to you for whom you procured work in the equity field, who has at the termination of an exclusive management contract between you and that client, gone to ICM or William Morris?

A I have not had an exclusive management contract with Barbara Rodell. We have had an exclusive agreement, again, a shake-hands agreement, for almost 14 years. On the

basis of that agreement, at one point she decided to try another agent; did for a [183] year, and came back. And in December of 1978 went and signed with William Morris.

Q So this was not a one-year relationship you had with Barbara Rodell, it was a 14-year relationship?

A Yes, it was.

[184]Q And after 14 years she decided to go to William Morris?

A Yes, and she's also decided to return to me.

Q Then when is the last time you have lost a client to William Morris who had been signed to you and an exclusive basis for a year and for whom you had obtained work in the Equity jurisdiction?

A I think the last one was Dennis Allen, who appeared in "How To Survive An Election," off-Broadway, no commission, 19 -- perhaps

'68 or '69; again, not certain of the date. Went to William Morris.

Q I believe you testified on direct examination that your business, after the dissemination of what you describe as the blacklist, fell off, is that right?

A Yes.

Q And the blacklist was disseminated in -- or what you describe as the blacklist was disseminated on December 27, 1977, is that correct?

A If that is the date, yes.

Q Isn't it a fact that in both 1977 and 1978, when the effect of this alleged blacklist would have had its impact, that your agency did exactly the same amount of business in the Equity jurisdiction, namely, one per cent?

A That could be true.

[185]Q Did you not submit one response to requests for discovery, that figure to your counsel?

A I did in deed. That is just the top of the iceberg, though. I don't know the business I didn't get because of that blacklist.

MS. BASES: I would ask that that be struck as nonresponsive, your Honor.

THE COURT: Yes. The question was "Was that the figure you submitted to your lawyer?"

Q Was that the figure you submitted to your lawyer?

A Yes.

* * *

* * *

[272] Q Yes.

"A They wanted ten per cent commission on all engagement procured by agents through the run of those engagements. It was the main demand."

Was that your testimony?

A I presume so. I mean you are quoting it from --

Q Page 91 of your deposition.

A Fine. If you press me to what I would consider to be the main economic demand, I'm sure that's right.

Q I don't mean to press you, Mr. Hausman, I'm just asking you for an honest answer as best you can recall it.

A Really all my answers are honest, sir, to the best of my recollection.

Q To the best of your recollection, was there a

main demand made by TARA during the negotiations with Equity?

A It has certainly been the position of all agents throughout that agents should get paid for their services. Everyone in the agency business thinks they ought to get paid for their services.

There was a period when we were asking for [273] something more than 10 per cent but I think in the minds of most of us at least 10 per cent of whatever the actor earned would have been a satisfying solution.

We didn't arrive at that solution. We have been very happy with the result.

Q And the ten per cent, that covered scale jobs?

A It would have covered any employment procured by an agent for an actor, whether it was for $20,000 a week or for scale.

Q Were there a number of TARA agents who were particularly concerned about

getting ten per cent or any commission on scale jobs?

A I would say all TARA agents were. All TARA agents were, yes, there were a number, all.

Q And William Morris itself was in favor of getting ten per cent across the board, including scale jobs, is that correct?

A We were and we are.

Q When TARA terminated Rule A in January of 1977, were virtually all members of TARA united in their desire to obtain ten percent across the board?

A I would say all were.

* * *

[281] We all consider that Equity's point of view was indefensible, outrageous, horrible, wrong, simply because they were expecting agents to subsidize the lowest paid actors, somehow to work for them without any way of getting paid.

We still all feel that way. We accepted a deal under which that was imposed on us. That is the way in which we accepted it.

Q I believe you testified that you were unhappy with the final agreement between TARA and Equity?

A That is what I just said.

Q Specifically, what points are you unhappy about?

A That's one.

Q When you say "that's one," I'm not sure what you mean by that?

A The failure to be able to get commission, at least 10 percent commission, from all the earnings of the client that you place when you place a client, whether that is at scale or at any rate.

* * *

TRIAL TESTIMONY OF DONALD GRODY IN THE DISTRICT COURT

* * *

[465]Q Mr. Grody, what was the situation which led to the formulation by Actors Equity of its agency regulation system initially?

A Well, the actor is a very vulnerable creature in respect of anybody who either employs him or who assists in getting him employment, and there were no regulations of any kind dealing with the activities of the middlemen, the agents.

And so before there were any regulations, before Equity began to take action in the area, agents -- actors were fair game for agents; there were no restraints on what commission would be charged; there were no limitations on the arrangements that could be made which were inflexible insofar as the actor was concerned, and not very favorable to the actor.

Seeing a necessity for moving in and getting rid of some of the abuses which had been practiced on actors, extracting large sums of money from them, getting money paid in advance and so on, it became apparent to the governing body of the union that some arrangement, an orderly arrangement, was necessary in order to protect the actors in this particular area.

* * *

[468] THE COURT: I'd like to ask you a question which might clarify this for me.

Do the producers deal only with agents or do they deal with anybody who might walk up to the door looking for a part?

THE WITNESS: Obviously a producer can deal with anybody. There are, however --

THE COURT: The question is whether they do as a matter of practice deal only with agents.

Do you understand the difference?

THE WITNESS: Yes.

Well, it's really hard to answer the question completely, your Honor, because different producers have different practices.

I would say mostly producers will with agents. The nature of the business requires that they deal with agents. There are --

THE COURT: That's what I was getting at, whether the industry as such, the way it has developed, that as a practical matter producers seek employees through agents, or actors and actresses through agents; is that the way the industry operates?

THE WITNESS: It does, your Honor.

* * *

[614] Q Mr. Grody, when an Equity obtains a job with a producer who is a party to a collective bargaining agreement with Equity, the producer and the Equity actor into an individual contract: is that correct?

A Correct.

Q The producer is then required to pay directly to the actor the agreed upon wages set forth in that contract?

A Correct.

Q That is true even if the actor has an agent?

A Not necessarily.

Q Unless the actor consents in writing to payment to the agent, is the producer required to pay the actor directly?

A Yes.

* * *

[636]Q Mr. Grody, are you familiar with particular kinds of abuses that the agency regulations were designed to correct, which have been committed by agents in the recent past?

* * *

[637] The specific situations that I can recall have to do with, for example, an agent on the West Coast, Ruth Webb, who, while she was representing our members as an agent, also acted as a packager of a play.

[638] When we found out about that, we proceeded under the terms of the agency regulations and ultimately became involved in an arbitration where it was resolved that the agent, under the rules, had no right and, indeed, was prohibited

from collecting agency commissions at a time when she was acting as a packager of a play, and the order of the arbitrator required the agent to return to our members the commissions she had extracted from them.

That kind of situation has existed for many years and I expect will continue to exist, and therefore the prohibition against it is one of the necessary ingredients to any franchising system.

Another situation occurred with an agent here in New York who was requiring our members, her signed clients, to use the services of a particular photographer and to require that the head shots, which is a group of photographs that are put together, be prepared in a particular fashion.

When we learned of this we com-

plained of the activity of the agent and suggested that if that activity were not stopped we would have to take away the franchise, and the agent complied with our requirement.

Another specific situation occurred in the case of Michael Hartik, who was a franchising agent who [639] tried to extract -- tried to get our members to sign agreements which called for a commission of 10 percent from the first dollar.

When we learned of this, and had evidence of it, we brought it to the attention of Mr. Hartik and proceeded then to revoke his franchise.

At that point he advised us that he had reconsidered and that he would abide by the Equity regulations and would not seek to sign members to a contract requiring a 10 percent commission, and we restored his franchise.

There was also a fairly recent situation that occurred at the Meadowbrook Theatre, a dinner theatre in New Jersey, just across the bridge, where an agent acted as a casting director for a particular production at the Meadowbrook Theatre.

Actually, it was a sub-agent of the agent who had been franchised, although the sub-agent also gets an Equity franchise as a sub-agent.

What happened in that situation was the casting director, the agent, would not make submissions for that play -- would not cast anybody unless they agreed to become aligned with that particular agency.

So that on the one hand he would be -- the [640] agent was working for the employer in being his casting agent, and at the same time he sought to extract commissions from our members for placing them

in the play.

That is a prohibited activity under the Equity agency regulations and we advised the agent of that improper practice and the agent, having -- I'm not sure whether he actually took the commissions and returned them or whether the practice was stopped immediately, and he said that he would not try to collect the agency commissions.

THE COURT: He was a franchised agent?

THE WITNESS: Yes. If he were not a franchised agent, your Honor, I don't know what action we could have taken against him.

THE COURT: You are suggesting that franchised agents are prohibited from acting also as producers or agents of producers in another capacity other than recruitment? Is that in the regu-

lations?

THE WITNESS: Yes, yes, your Honor.

THE COURT: All right. Now I understand why we are bringing this out.

MS. BASES: Just to clarify that:

Q Is an agent totally prohibited from functioning as a casting director or is he regulated in some way if he [641] does act as a casting director?

A The prohibition is not total. The regulation applies only in that instance when the agent acts as a casting director.

For that period of time, or during that period when he is in fact in the employ of the producer, we do not permit him to extract an agency fee, since obviously he cannot properly represent an actor if he is acting for the employer.

THE COURT: All right.

Q In connection with this incident, did the casting director inform the director indirectly of the availability of the actor, if you recall?

A Well, what we have learned is that anybody who was not -- who would not agree to be aligned with that particular agent, who was acting as a casting director, would not get a submission and, indeed, actors who were available for work were told by the agent acting as a casting director -- I'm sorry, the agent acting as a casting director told the producer or director of the play that certain actors were not available when in fact they were.

* * *

[642]Q What does Equity do with the franchise fees it collects from agents?

* * *

A The money that we collect from

the franchising system is deposited in general funds.

Q What is it used for?

A It is used for the administration of the Equity agency regulations.

Q What does the administration of the Equity agency regulations involve in terms of salaries and functions and costs to Equity?

A Here in New York we have one person who is involved full-time in maintaining the agency files, in responding to innumerable telephone inquiries from producers, from agents, from actors, concerning the status of one or the other.

Producers constantly call up saying, who represents so-and-so actor, or agents will call up and say, is so-and-so actor represented. There are constant [643] inquiries.

There are the usual provisions,

usual requirements of the individual employment contract coming in with the name of an agent. That has to be checked against the file to see that there is in fact an agency contract on file for the member.

The maintenance of all the records because they are so comprehensive. we have had to get -- this is in New York City -- a IBM machine called an OS-6, which is a word processing machine which costs us $685 a month, on which we are putting all the agency files, so that we will be able to provide a better service to producers, to agents, and to members who make inquiries about actors who have agents.

Then there is, of course, the salary of the one employee in New York which, with fringes, is probably around $15,000.

We also have agency functions to be performed in Chicago, where we have an office, and in Los Angeles, where we have

an office. Indeed, the activity in Los Angeles because of film and television, is very substantial.

The same kind of work is performed in those two offices. I would say -- oh, and in addition, of [644] course, when I was talking about New York City I talked about the one employee who was directly assigned to that problem, yes, the agency regulations.

In addition, one of my colleagues, Guy Pace oversees the agency area and I am, of course, and have been for some time very much involved in the area.

I would have to say in terms of our cost to us in running the, administering the agency rule, the Equity agency regulations, I would think that the cost to us would have to be somewhere in the neighborhood of forty to fifty thousand dollars a year.

Q Do these costs exceed the intake from the franchise fees?

A By far.

Q Would these costs exceed the intake from the franchise fees even if there were none of the duties associated with the current agency dispute that had to be done?

A I would say definitely yes.

* * *

[661]Q During the negotiations with TARA, did TARA question the need for the increased franchise fees that Equity had requested?

A No, I don't believe so. I think we explained [662] that the franchise fees had remained the same for almost twenty years, that is, the initial application, the franchise fee and the annual payment, and that we thought it was time to have an increase in the franchise fees. They did not seriously resist that. My impression

of the response was, if we can put everything in place, we will agree that there should be an increase in the franchise fees.

* * *

TRIAL TESTIMONY OF ROBERT FISHKO IN THE DISTRICT COURT

* * *

[665]Q Mr. Fishko, what is your occupation?

A I am a theatrical manager and producer.

Q Are you a member of the League of New York Theatres?

A Yes.

Q How long have you been a member of the League?

A Since 1968.

Q Approximately how many plays have you produced or been involved in in the production of?

A Oh, a couple of hundred.

Q Approximately how many actors have you hired during the course of your career as a producer?

A About 1500.

Q Approximately what percentage of those acts were hired for principal roles in your productions through a theatrical agent?

A Of the number of actors, more than half were engaged for principal roles. And of those, I would say 70 or 80 percent were hired through agents.

[666]Q By principal roles, am I correct in understanding that a non-chorus role is considered a principal role?

A Yes.

* * *

[667] Q Approximately how much time is spent with each actor who appears at that principal interview?

A A minute or two.

Q Is it fair to say that only a small percentage of actors are generally asked to come back for a reading?

A A small percentage, yes.

[668]Q Do you frequently in the course of your work as a producer receive calls from agents about actors they are submitting for roles?

A Yes, I do.

Q And do you speak to those agents directly when they call you?

A Frequently.

Q Do you also get calls directly from actors and actresses?

A Yes, I do.

Q And do you generally speak to them?

A. Sometimes. Not usually. Generally if the call is directly from an actor who I don't know, they are invited to send a picture and resume in and I will look at it later.

* * *

[680]Q Have you been asked by agents to pay an actor more than the minimum or

scale salary in order that the agent can obtain a commission?

A Yes.

Q Have you done so?

A At times, yes.

* * *

[682]Q So one could have a principal role even though [683] his part by layman's standards would be a very small part in the production, is that right?

A Oh, yes. Virtually any speaking part is a principal role.

Q Any speaking part.

* * *

* * *

[709] Q What is your profession?

A I'm an actress - singer.

* * *

[711] Q As a principal performer, do you need an agent?

A Yes, I do.

Q Why do you need an agent?

A I need an agent to be able to audition for shows, because otherwise I couldn't get -- I couldn't be seen by the directors or producers.

Q Have you tried to see producers without an agent?

A Yes, I have.

Q Have you ever been successful?

A No.

Q Have you gone to principal interviews?

A I very rarely go, because I

think it's a waste of time.

Q Why is it a waste of time?

A So often you see a secretary or stage manager, and your picture winds up on a pile of other pictures, and you are never called.

Q How do you get your work in the legitimate [712] theatre field?

A I am submitted by an agent for an audition. You go and you audition. Sometimes you have a callback, and you get the job.

Q Is the principal interview the same thing as an audition?

A No. You are just seen by someone who talks to you as to your experience and what role you might be interested in as far as the show is concerned that they are casting.

Q Do you get a chance to show your talent at a principal interview?

A They do not give you that much time. It could be anywhere from a minute to three minutes that they talk to you.

* * *

[715] Q Have any of them represented you in the legitimate field recently?

A Yes.

Q Who?

A Marje Fields.

Q How did it come about that Marje Fields represented you in a legitimate theatre production?

A The end of January I was called by a Miss Dorothy Scott, who is a sub-agent in the Marje Fields office.

Q What did she call you for?

A To audition for a show called Blues In The Night. I had two auditions and I got the show.

* * *

[715(A)]Q How had you been submitted for

this show?

A I had been submitted by Miss Dorothy Scott of Marje Fields Agency.

[716] A I had been submitted by Miss Dorothy Scott of Marje Fields Agency.

Q Why?

A I had been submitted because I was put on a list of people to stay by the producer, who was Sheldon Epps.

Q Did Miss Scott negotiate your contract?

A Yes, she did.

Q What salary did you get?

A $250.

Q Is that over scale?

A Yes, it was.

Q Was that much over scale?

A No, it was not. It was enough to pay the commission.

* * *

[724] Q Mrs. Britten, when you obtain a job at Equity, who pays you? How does the

pay work?

A The producer pays me.

Q In what form? Is that a check?

A Can be a check or it can be cash.

Q Who receives that check?

A The talent receives the check. Myself.

Q You get the check?

A Right.

Q And then if there is a commission, you pay that yourself?

A If there is a commission, it is my duty to pay the agent.

* * *

* * *

[749] Q Miss Lea, what is your profession?

A I'm an actress and singer.

Q Are you a member of Actors Equity?

A Yes.

Q How long have you been a member?

A About 17 or 18 years.

Q Do you work in the legitimate theatre field?

A Yes, I do.

Q Do you do a lot of work in the legitimate theatre field?

A Yes. That is my main field of activity.

Q Have you worked in the legitimate theatre field without an agent?

A Yes.

Q Have you worked in the legitimate theatre field [750] with an agent?

A Yes.

Q Are you currently signed on an exclusive basis with a theatrical agent?

A Yes, I am.

Q How long have you been so signed?

A Just about three years.

Q Prior to being signed with this agent, were you signed with any other theatrical agent?

A No.

Q Did you work with any agents on a free-lance basis?

A Well, a little bit, when I could get them to represent me. But I wasn't very successful in getting free-lance representation.

Q How did you try to get free-lance representation?

A Well, I sent pictures and resumes; I invited agents to performances that I would be giving in the New York area; and in fact, at one time, I believe it was early in 1976, I took the whole list of agents and started to go right down the list geographically to every single agent's office. I didn't get all the way through the list because I got in a good showcase at Equity Library [751] Theatre and had to stop for rehearsals.

Q When you say you invited agents to your performances, did anybody request you to do that?

A Yes. Sometimes on the rare occasions when I was successful in getting to see an agent or someone in an agent's office, often they would say, let me know when you are doing something in town.

Q And would you let them know when you were doing something in town?

A Yes.

Q Would they come?

A I didn't find that they did, no.

Q How would you know whether they came or not?

A There would always be a list of what agents had attended.

Q You state that you have been signed to an agent for the last three years?

A Yes.

Q Is that an Equity franchised agent?

A Yes.

Q Has your relationship with your agent affected your ability to get work in the Equity jurisdiction?

A Yes.

Q How has it affected your ability to get work?

[752] A Well, I have gotten a lot more

auditions and auditions with a lot better people, rather, with a lot more important productions or producing organizations.

Q When you say a lot more auditions, what kind of auditions have you gotten that you had not gotten prior to being represented by an agent?

A Several Broadway auditions, for the main thing.

Q Had you attended principal interviews?

A Oh, yes. Yes, by the dozen.

Q Did you ever get an audition from a principal interview?

A Yes, I did, but for smaller summer stock companies and dinner theatre occasionally. Not ever for a Broadway, or I think off-Broadway production.

Q Have you attended principal interviews for Broadway productions?

A Yes, yes.

Q From the years 1972 to 1976, approximately how many principal interviews for Broadway productions did you attend?

A I would say maybe 30. 25 or 30. It's hard to guess.

Q This is just for Broadway productions?

A Just Broadway, yes. It's hard to separate [753] them in my mine from non-Broadway. It seemed I was going all day, every day.

Q Did you get an audition from any of them?

A No, I didn't.

Q Since you have been represented by an agent have you gotten any Broadway auditions?

A Yes, several. Probably at least six, maybe eight or ten.

Q How long is a principal interview?

A Well, you mean how long is each

individual scene in a principal interview?

Q Can you describe the principal interview process very briefly?

A Yes. The principal interviews are set up, I think they are now three days, but at the time that I was doing them they were two days. Two eight-hour days. And I would go very early in the morning, perhaps two or three hours before the principal interview started.

Q Why would you do that?

A Because there was such a long list of people waiting to be seen. There may be 500 people show up on each day and people just took to showing up earlier and earlier to get their name on a list so that they could then be given a card so that they could then either wait [754] to be seen or sometimes there would be three or four interviews in one day, and you'd run from one to the other and back and forth, and, you know, is my number coming up here yet, or up here.

Q And when you were seen --

A When you were seen you would have maybe a couple of minutes.

Q Did you get to perform?

A No. That was one of the bad things about it.

Q How is an audition different from a principal interview?

A In an audition you do at least to some extent perform. I think there is no similarity, really, because one is just presenting yourself and one is working with a script. And working with a script is totally different. I don't think there is any way to assess capability from an interview.

Q Aside from these Broadway auditions which you have gotten with an agent, which you were unable to get through the principal interviews without an agent, are there any other examples you can give of how an agent has helped you get auditions

you could not get before having an agent?

A Well, yes. One of the main things that sticks [755] out in my mind was the Goodspeed Opera House.

Q What is the Goodspeed Opera House?

A You could call it a summer stock theatre, although it was about a six-month season. It's in Connecticut and it's a theatre where New York agents and producers very frequently attend the performances. They produce musicals only, three a season, and many of their works happen to come to Broadway.

It has a kind of reputation as a Broadway tryout house.

Q Had you tried to get an audition with the Goodspeed Opera House?

A Yes, I had, for several years.

Q What had you done to try to get an audition?

A I had sent pictures and resumes with letters to the producer; I had attend-

ed principal interviews and had never gotten an audition out of them.

One year, in fact, I felt that possibly there were some very small roles that might have been cast out of chorus calls, and I went to chorus calls and was told that the roles, however, had previously been cast.

Q Did the situation change when you began working with an agent?

A Yes. When I was signed to my agent, I thought [756] there was something I was right for, I asked her to submit me, and I immediately got an audition and got the part.

Q In your contacts with agents have any agents engaged in any practices which you considered unethical or unscrupulous?

A Yes. There was one agent, in the mid-60's, the only agent at that time that seemed to be interested in submitting me for anything, and got me one or two little

things, or I got one or two little things through her. And she very, very strongly hinted that I should pay her more than 10 percent.

And really put quite a lot of pressure on me to pay her more than 10 percent, which I wound up doing.

* * *

[757] Q Did you pay her more than the 10 per cent?

A Yes, I did.

Q Did you complain to Equity?

A No.

Q Why not?

A Well, I really was afraid. She was the only one at that time that was sending me out on calls, and I just didn't want to blow that little connection, small though it was.

Q Has any other agent you have dealt with engaged in any practices which you consider unscrupulous or unethical?

A Well, there were a couple of attempted [758] "casting couch" episodes.

There was an occasion on which I think for no legitimate reason I was asked to return to the agent's office at 11 o' clock at night.

* * *

And there was another instance of actual chasing around the office, which was really -- you are right to laugh -- it really struck me as ludicrous at the time. Nevertheless, there it was.

The man was a notorious office chaser. I don't say that there are many such, but this was one.

* * *

* * *

[770] Q Mr. Bikel, what is your occupation?

A I am an actor.

Q How long have you been an actor?

[771] A Well over thirty years.

* * *

[773] Q Are you familiar with the principal interview system?

A Yes, I am.

Q Is the principal interview system in any way a substitute for having an agent?

A Oh, no.

The principal interview system was basically invented by Equity as a device of furnishing for the actor who is not represented by an agent some kind of modicum of access to jobs. But the sad fact of the theatre is that the access to jobs

is far better served by the fact of an agent's representation.

We do force, through the principal interview system, force a producer to see everybody whether or not they are represented by agents. But it is at best a poor substitute.

Q Are theatrical agents necessary only in New York?

A Oh, no. They may be even more necessary on the West Coast, because the cross-over between the fields of employment is greater, notably in television and films.

Q Would you tell the Court briefly what the [774] purpose of Rule A and the franchising system was?

A The purpose of Rule A is to protect the actor against possible abuse. Also, incidentally, to protect the agent, because under Rule A if an actor fails to fulfill his obligations to the agent, we

would compel the actor to live up to his obligations to the agent under the rule. It stops abuses by, or possible abuses by the agent, stops possible conflict of interest by an agent, where an agency might have an interest in an upcoming production and cast that production with its own clients and then collects from both ends; Rule A also protects the actor in the sense that it prevents indefinite or unreasonably lengthy ties to an agency, whether or not the agent does anything for the actor.

In other words, under Rule A, if for 90 days the agent did absolutely nothing for the actor, the agent under Rule A can be dismissed summarily by the actor.

Q Are there any other types of abuses which Rule A was designed to eliminate?

A Well, Rule A provides for an inspection of the agency by Equity, to make

sure that there are regular office hours *** kept, that everybody is being seen, that no underhanded business goes on. It prohibits exploitation, or sexploitation, as it is called these days, in terms of [775] the casting couch.

And it provides for a system of arbitration to resolve disputes which otherwise would have to be litigated.

Q Based upon your thirty-plus years of experience in the industry and familiarity with the agency franchising system, have you come to any conclusions with respect to whether the need for the system has changed in any way?

A It has not.

Q Does every job obtained by an actor depend upon the expenditure of time and effort by an agent?

A Actually, it doesn't. An agent very often is in a sense an order-taker.

He waits for the phone to ring and when it does, obviously he will negotiate for the actor. At times an actor will get his own job, and then the agent will negotiate a salary for him. The agent -- well, there are better agents and worse agents, but it does not necessarily depend on legwork or phone work by the agent whether or not the actor gets the job.

He can get better terms once he has the job, through the fact that he has an agent.

Q Are there ever situations in which the agent does virtually nothing and then claims a commission?

A Oh, yes, very often. In fact, when an agent [776] does nothing at all and yet the actor is still under contract to the agent and the actor has gotten by some way -- special contacts, being seen at a party or being seen in something else,

through direct contact with a new management -- if the actor receives an offer of a job, then that agent gets the commission for that job.

Q You mentioned a dispute-resolving mechanism.

Have you ever been involved in the operation of that process?

A Yes.

Q Would you tell the Court about that?

A For my sins they put me on the American Arbitration Association's panel as an arbitrator, and I once had cause to be called as an arbitrator in a case involving an actor and an agent where the agent claimed that she made one phone call-- in fact, the actor was Zero Mostel, and the agent claimed she made one phone call which years later led to Zero Mostel getting the role of Tevye in "Fiddler On The Roof," and she claimed commissions on

the entire run.

Q And you participated in resolving that?

A Yes.

Q In the normal practice in the industry, is there a certain calculated risk or gamble involved between the [777] agent and the actor?

A Well, yes. They gamble on each other. I guess the agent gambles just as much. If an agent signs up an actor at the entry level into the profession, he will say to himself, I suppose, "I am not so much out for my 10% of the $150 or $200 that this actor is likely to make tomorrow but I am interested in the $5000 salary that he may get the day after tomorrow, if he becomes hot." So it is the look toward the future that people gamble on.

* * *

[780] Q Based upon your knowledge and experience in the industry, your familiarity

with the needs of actors and their relationships with agents, have you come to any conclusions regarding what would occur if the franchising system were eliminated?

* * *

A I think utter chaos would result. What would happen would be no only that the abuses and possible abuses would be laid wide open. Also what I can see is that the other jurisdictions would suffer. The other entertainment unions would, in the wake of the franchising system being eliminated or destroyed, would have an incredible abount of litigative work to do on behalf of the actors. Because each time an infraction would happen between an agent and an actor, the courts would be swamped with such cases, where at present only the arbitration process is being called into being.

There might be far more exploitation of actors by agents who literally

work out of a cubbyhole or out of a [781] telephone booth who hold themselves out as agents.

Young actors, when they are hungry, grasp at anything. I see a very bleak future if there were no franchise.

* * *

TRIAL TESTIMONY OF GUY PACE
IN THE DISTRICT COURT

* * *

[792] Q Where are you employed, Mr. Pace?

A Actors Equity Association.

* * *

[793] A I am one of three executive assistants.

Q Do you have any duties in the agency area?

A I do.

Q What is your duty in the agency area?

A Generally, when I became involved with the agency dispute earlier this year, I was involved with matters relating to the problem with the nonfranchised agents.

And as I became officially the esecutive for administration, I replaced Mr. Randy Phillips as the person in charge

of the general workings of the agency department.

Q What are your responsibilities in terms of the general workings of the agency area, apart from the dispute between Equity and the nonfranchised agents?

A Generally the representative Betty Byrne, who handles that department, would report to me. I see to it that the daily workings, the clerical aspects of that function, are handled correctly, the filing of contracts, the handling of routine conflicts, disputes, those kinds of questions.

I am the liaison, the staff person for the agency committee. I would report to Council, our governing board, on matters coming from the committee.

In areas where there are questions of a policy nature, that would be reported directly to me. I would [794] make those decisions.

When there are disputes over whether a contract is properly terminated, once it is investigated by Betty, if there is a question, I would jump in on that.

Q What do you mean, "whether a contract is properly terminated"? What kind of a contract are you talking about?

A Within the terms of, say, an exclusive management authorization. There are very specific terms as to when an actor or an agent can terminate the contract.

I am thinking particularly of the 90-day clause.

Q You would resolve any questions about that?

A Any questions that would relate to that, if they were not routine.

Similarly, areas of problems with commissions. I can recall an agent sent us a letter saying that one of our members who was properly signed to him owed some

commission moneys. We investigated it and once I determined that the commission was properly owed, I pursued the member and effected the proper payment of the commission.

There are times when I would get involved with some problems, when a member goes back and forth to the Coast; we used to at one time have a policy where a member could have a contract on each Coast.

[795] That has been altered to the extent that only one contract can exist, but if a member wishes to use another agent on the other Coast, we would step in to make sure that each of the agents are aware of what is going on and that the permission is granted.

Q When you say "a contract on each Coast," are you referring to an exclusive contract?

A Yes. I am generally referring

to exclusive contracts. The specific contracts are for a specific show. These are handled fairly routinely.

Q Does Betty Byrne handle any questions involving discretion or exercise of discretion?

A No.

Q What kinds of questions in the agency area does she handle?

A Very routine. What would be the commission rate, who are franchised agents, what are the particular terms of the contracts. In any area of policy, Betty would not be permitted to get into that. So, for example, when the members have been recently calling to ask-- to voice their concerns about the dispute we have been engaged in, that would be immediately turned over to myself to handle

* * *

* * *

[765] Plaintiffs and defendants agree as follows:

1) The following 5 of the 23 plaintiffs negotiated no contracts in Equity's jurisdiction (i.e., the legitimate theatre field) from January 1, 1976 through October 31, 1978:

Tranum, Robertson & Hughes, Inc.

Raglyn-Shamsky, Ltd.

William D. Cunningham Associates, Inc.

H. A. Artists & Associates, Inc.

Don Buchwald & Associates, Inc.

2) A sixth plaintiff, Joe Jordan Talent Agency, Inc., derived only 1/10 of one percent of his income in [766] 1976, 1977 and the first half of 1978 from contracts negotiated in Equity's jurisdiction.

3) In a questionnaire sent to plaintiffs by plaintiffs' counsel pursuant to interrogatories propounded to plaintiffs by defendants, all plaintiffs were asked if they had ever asked any producers not to identify them as the agent who negotiated the contract for the Equity members.

(a) The following plaintiffs made such requests to the producers and the producers complied:

J. Michael Bloom Ltd.

Marje Fields Inc.

Lester Lews Associates, Inc.

Monty Silver Agency, Ltd.

Michael Thomas Agency, Inc.

D.M.I. Talent Associates, Inc.

Oppenheim Christie

STE Representation, Ltd.

(b) The following plaintiffs* did not make any such requests of producers:

Leaverton Associates, Ltd.

Talent Representatives

Bob Waters

Ann Wright Representatives

[767] Joe Jordan Talent Agency, Inc.

Tranum, Robertson & Hughes Inc.

Raylyn-Shamsky, Ltd.

William D. Cunningham Associates, Inc.

H. A. Artists & Associates, Inc.

Don Buchwald & Associates, Inc.

And there is a footnote to (b), your Honor, which states as follows:

*These include the 5 plaintiffs who did no business in Equity's jurisdiction and the plaintiff who did only 1/10 of 1% of his business in Equity's jurisdiction in 1976, 1977 and the first half of 1978.

(c) The remainder of the plaintiffs did not respond to the questionnaire.

4) The following plaintiffs have no

written contracts with actors for whom they obtained employment in Equity's jurisdiction (i.e., in the legitimate theatre field) during the period January 6, 1977 through October 31, 1978 (the cut-off date for discovery in this regard) containing the commission or fee to be charged by the agency to the actor for whom employment was obtained, and have no other statements, copies of which were furnished to the actor, containing the terms of employment and commission or fee to be charged by the agency to the [768] actor:

Bret Adams, LTD.

Oppenheim-Christie Associates, Ltd.

D.M.I. Talent Association

Henderson Hogan Agency, Inc.

Joe Jordan Talent Agency, Inc.

Leaverton Associates, Ltd.

Lester Lewis Associates, Inc.

Joel Pitt, Ltd.

Monty Silver Agency, Ltd.

Talent Representatives, Inc.

Jean Thomas Agency, Inc.

Michael Thomas Agency, Inc.

Jacobson-Wilder, Inc.

Ann Wright Representatives, Inc.

Bob Waters Agency, Inc.

J. Michael Bloom, Ltd. has contracts stating the commission to be charged (10%), with some but not all of the actors for whom it obtained employment in Equity's jurisdiction during the above-stated period.

* * *

* * *

[4] Q Are you a member of Equity?

A Yes.

Q How long have you been a member?

A Since 1955.

Q Continuously?

A Yes.

* * *

[8] Q By Rule A, I am referring to the present regulations.

A Present regulations are the Agency Regulations.

Q By Agency Regulations, I assume, we are talking about --

A That is the new title.

Q I assume we are talking about the regulations which govern agents, theatrical agents who perform services for Equity members?

MS. BASES: Off the record.

(Whereupon, a discussion was held off the record.)

Q Do you have any duties with respect to the Agency Regulations?

A Yes.

Q What are your duties?

A Now, that I am on the staff, my contact with whatever has to go down to discuss, whatever changes may be made and any liaison that has to be done with the representatives of TARA. T-A-R-A, [9] Theatrical Artist Representatives Association, Inc., whatever it is. And more spefically, to try and bring together into a form of a rule book those agreements that have been worked out.

Q You are aware that under the Agency Regulations, an Equity member cannot deal with a nonfranchised agent?

A Correct.

Q Do you have any duties with respect

to that aspect of the Agency Regulations?

A Yes.

Q What are those duties?

A Up to the present, it is sending out of a letter or seeing to it that letters are sent out. I don't actually do the paper work. But as I said, I have the oversee of everything that happens. So, therefore, I am not actually handling the work, but responsible that it is done.

Q You are responsible for the day-to-day enforcement of the Agency Regulations?

A That is right.

* * *

[29] Q Were you aware that there was a time when Equity permitted an agent to earn a commission on scale jobs?

A Yes.

Q When did that end?

A When we adopted the agency regulations, the new set of rules.

Q Are you talking now about 1958?

A No, I said agency regulations. Rule A precedes the agency regulations.

Q That would have been about October of 1977; is that correct?

A I think so, that is approximately right.

Q Prior to October, 1977, Equity permitted under Rule A agents to obtain a commission on scale jobs?

A Correct.

Q Was that five percent?

A It varied. There were some areas where no commission was permissible.

There were some areas where five percent of scale was permissible. There were some areas where [30] five percent of a portion of the minimum salary and ten percent of it was permissible. It depended on what contract area you were in.

* * *

[34]Q Wouldn't a letter also be sent to a member when it turned out that a production contract and the agent wasn't franchised?

A It is the same difference.

Q Theoretically, isn't it possible for an Equity member to enter into a contract with an agent who is not franchised?

A Not on our forms.

Q Why is that?

A When an actor signs a contract with an agent, he should according to our regulations do it on the forms that are submitted -- supplied by the union. If in fact he signs one of those forms with a nonfranchised agent, when that contract comes in, it is rejected because the agent is not franchised.

Q When that occurs, would the member be sent a letter of the nature you just described?

A Yes, again, that would be a form letter.

* * *

[69]Q What does Equity do with the franchise fees it receives from the agents?

A Put them into our general fund.

Q Are they used to cover the costs [70] incurred by Equity in administering the franchise program?

A There is no specific relationship between the monies that we receive for franchise fees and the cost factors that the union has in trying to administer that area.

Q Does the union know what its costs and expenses are in connection with its administration of the franchising system?

MS. BASES: By the "union", re you asking does Mr. Phillips know?

MR. BREINDEL: Well, whether Mr. Phillips or anyone else at the union, to his knowledge.

A. To my knowledge, no one would know. Other than the salaries involved and being able to maybe break down, if that were possible, which I doubt, the time of myself, Betty Byrne, my secretary, and any papers, typewriter ribbons, paper clips, etc., etc. Other than that,

no, and the forms that have to be printed.

Q To your knowledge, has Equity ever attempted to ascertain what it costs it to administer the franchising system?

[71] A There is no cost breakdown as to how much it cost to administer that area.

Q My question was: has it ever attempted to ascertain these costs?

A No.

* * *

* * *

[28]A I cannot at the moment recall spefic abuses. Generally, when abuses are revealed to us, circumstances are described by the actor, and we are advised of it only if we guarantee that the actor's anonymity will be maintained, because raising these issues in an industry as tight as ours is, could end up in an actor being black-listed or if not, very severely would his employment opportunities be affected. Actors are reluctant to discuss these things. When they do discuss them, generally, they do not want to permit any notoriety to be attached to it.

Q The black-list that the actors fear, would that be by the agents or the producers or both?

A Well, since we are engaged in a dispute with agents, if there would be one, it would come from the agents, not from the producers.

* * *

[148]Q Did Equity give TARA any reasons for which it sought an increase in the franchised fees?

A My recollection is only that it assisted us in helping to administer the area.

Q Administer the agency regulations?

A Yes.

Q What does Equity do with its franchise fees and initiation fees?

A Well, you described some of the things today, in terms of the checking that Betty Bryne does, responding to inquiries from producers, from agents, what members are doing, whether they are available. Really an endless thing. Betty Byrne's phone is ringing incessantly with

inquiries, where to find actors, is this actor signed by that agent, the producer wants to find the actor, is he still assigned to so and so agent. A great deal of her work is taken up to responding in getting employment for a member. [149]Q The franchise fees are used to pay Equity's expenses in this connection?

A To administer the area. We publish rule A, that is published at our expense, and is given out freely to agents. Whatever the costs are; the forms that we prepare and disseminate.

Q Was Equity's request of TARA that it agree to increase franchise fees and initiation fees based upon the fact that Equity's costs in administrating Rule A, increased?

A I honestly don't recall.

Q Has Equity done any studies or made any investigation to determine what

its costs are, in administering Rule A?

A No.

Q Did TARA question the need for increased franchise fees?

A I believe they did; yes.

Q Did Equity justify its request for increased fees?

A I honestly don't remember.

Q Did you --

A It was not a major issue in our discussion.

* * *

PETITIONERS' EXHIBIT NO. 3
IN THE DISTRICT COURT

[Theatrical Artists Representatives Association, Inc. Letterhead Omitted In Printing]

March 25, 1975

Actors Equity Association
165 West 46th Street
New York, N.Y. 10036

Attention: Messrs Theodore Bikel and Don Grody

Reference: RULE "A": REVISIONS

Gentlemen:

The members of TARA are deeply concerned about the present state of our business, with which all of us are only too painfully familiar. The cost of doing business in the legitimate theatre, like everything else, has risen sharply over recent years, and this is particularly true for those Agents who are primarily or even exclusively functioning on behalf of the members of Equity.

We are requesting a reopening of "RULE A"

for amendment, because this RULE A in its present form does not permit franchised agents to earn back the cost of operating an efficient organization in New York, let alone make a profit.

Many of our members doubt whether they can long continue in the field. Without naming names, we all know that many fine and trusted agents have deserted the ranks, either going into other fields such as personal management or moving to the west coast. Many of those who function now in the field of Equity get their living from other sources, such as commercials, occasional motion picture deals and so forth. Other agents have had to give up their independence and merge with bigger offices. But even the big and powerful agencies find it now unprofitable to handle work in the theatre, especially the representation of the average income earning Equity member.

If Equity wants its franchised agents to continue to function efficiently and effectively for those actors in the theatre who need the services of agents, and we believe these services to be more essential now than ever before, then the provisions of RULE A must be revised promptly.

Two years ago, representatives of TARA met with the Agency Committee to review this need, which was dire even then. Though the Agency Committee was sympathetic to the agents' problems, nothing tangible resulted from the discussions.

The time is now past when agents can afford to continue to wait for an improvement. The improvement must be provided without delay. Expenses are sky-rocketing: to operate an agency with the local and long distance telephone costs, postage, rents, taxes, travel, entertainment and secretarial, bookkeeping, legal and other fees have now made

it imperative that help be given to enable reputable agents to survive. Those trying to cover regional and stock theatres have complained especially, but all, without exception, are feeling the pressure. Many of those still active feel they must soon discontinue operation in the legitimate theatre unless we can all stand together to find a way for such operations to be practical and profitable.

For this reason we urgently request a meeting between the executives of Actors Equity Association and representatives of TARA to consider adjustment of RULE A along lines like the following:

a) In the recent talks between representatives of Equity, the League of New York Theatres and TARA, Equity and the League agreed to reaffirm to their members that only franchised agents may negotiate employment deals for Equity performers. This is

indeed already provided for in RULE A, but the clause has been regularly overlooked, neglected and, in practice, disregarded by producers and managers. The franchise (RULE A) is theoretically a mutually obligatory agreement. Without real adherence by the League and Equity to that provision, the more profitable engagements, of stars and lead players, are siphoned off from franchised agents by innumerable "business managers", "attorneys", "personal managers", and "accountants". These are not franchised nor controlled in any way by Equity. If they negotiate for performers -- and they do -- the commission revenue is lost to franchised agents.

b) As in all other fields served by agents, we should be paid a straight ten percent commission from the first dollar on all non-chorus engagements, including those under $1,000.00 per week. (Perhaps

salaries over $1,000.00 per week should be commissionable at a higher rate, on a sliding scale. As it is, the commissions from higher paid performers enable agents to stay in business, and service the lower paid ones as well. Perhaps this fact should be recognized and regularized.)

c) Commissions should be payable to agents on all salaries earned by Actors, (except for chorus and for rehearsal minimum) from the first day of the engagement to the last. This should include LORT engagements, where actors earn the same salary for rehearsal as for performance, usually for a longer period than the actual performance period. This would eliminate the "ten-week cut off".

d) The greatly expanded field of Off-Broadway should be commissionable, since Actors often want the services of agents, and agency operation costs are no lower

there than on Broadway ... sometimes higher. No agent can service Off-Broadway profitably under present rules. As a matter of fact, no agent can even hope to break even when servicing Off-Broadway.

e) When a negotiated salary includes "expenses", (often spelled out that way for the benefit of and at the request of the Actor) such "expenses" should be commissionable as salary. This principle also includes the recent provisions you negotiated for out-of-town production contracts. (Equity unilaterally"declared" these non-commissionable this season without notice to, or discussion with, the agents.)

f) Agents should be allowed to be reimbursed by clients for unusual expenses, such as long distance phone calls, cabs, xeroxing of scripts, and trips, incurred at the request of the client. We genuine-

ly believe that most of the members of Equity simply do not comprehend what it costs to run an average office week after week, and what is involved in a quick trip to Boston, Philadelphia, Washington, or in half a dozen long distance phone calls to straighten out some minor contractual matter, where no further improvement in terms is involved. We would like it clearly understood that we are not referring here to the decision made by the agent that it is in the best interest of the client and the deal to make a long distance phone call, to send a cable, or to make a trip out of town, but are referring only to those instances where the client requests maybe a second or a third out of town visit, where it is already impossible for him to pay for the agent's time, but should be possible for the client to pay for the agent's expenses. Attorneys charge for every min-

ute they spend counselling a client on the telephone, sending a letter, making a trip. They charge for all "unusual" expenses. Agents are perfectly prepared to bear this burden, as they have done historically, but it must be their decision when to shoulder this burden and in what manner and to what extent. When the client demands additional service, for which he cannot pay, he should at least attempt to pay the expenses.

g) Equity should help agents enforce the prompt collection of properly earned commission. In this regard, the standard production contract should have provisions for the inclusion of the negotiating agents' name, (as is done with Stock and LORT contracts). That would at least formalize the Actor's acknowledgment of the Agent's service, and eliminate the "Special Management" contract. Once

again: The franchise is a mutually obligatory agreement, and should be enforced by the Union for both its members and the Agents.

h) Both the League of New York Theatres and TARA seem to want a rule whereby the Union will honor the exchange of wires and/or letters confirming a deal, rather than insisting on the final contract as the only valid agreement. This modification could help protect the actors as well as the managements. It should be re-examined together.

We suggest a date be set within the next three or four weeks, to start discussions of these points. They are not peremptory demands. Far from it. They are an urgent appeal to fairness and business commonsense to enable those who serve your members to give good service, to function in a successful and orderly manner and to fulfill all

of the obligations that are inherent not only in the letter of agreements or franchises but in the spirit of the relationship between your members and your franchised agents.

Copies of this letter are going to all Equity franchised agents whether TARA members or not. TARA has approved it.

Please let us hear from you soon, so that a mutually convenient appointment can be arranged. We all have the same interests at heart, even though from different angles, and we all know that the need is real and extremely urgent.

Very sincerely yours,

THEATRICAL ARTISTS REPRESENTATIVES ASSOCIATION, INC.

/s/ Robert Lantz

Robert Lantz, President

PETITIONERS'S EXHIBIT
NO. 5 IN THE DISTRICT COURT

MINUTES OF THE COUNCIL
MEETING OF NOVEMBER 25, 1975

* * *

It was believed agents should be put on notice that Equity is aware of abuses.

Instances were cited where an actor who is not signed to an agent, is told that he would be submitted by an agent for a specific job. That actor then does not allow any other agent to submit him, and therefore runs the risk of being left out. Further, an agent who says he will submit a member is eliminating that member from the competition because he is really going to sumit[sic] a client of his. It was believed to be AEA's responsibility to police and service its members in this area regardless of the time and money involved.

* * *

PETITIONERS' EXHIBIT NO. 67
IN THE DISTRICT COURT

[National Association Of Talent Representatives, Inc. Letterhead Omitted In Printing]

31 August, 1977

Mr. Don Grody
Actors' Equity Association
1500 Broadway
New York, N.Y. 10036

Dear Mr. Grody:

The following members of National Association of Talent Representatives, Inc. (NATR) who have also been members of Theatrical Artists Representatives Association, Inc. (TARA) have resigned from TARA because they cannot in good conscience accept the terms and proposals being negotiated by Equity and TARA.

H.A. Artists & Assoc.
Bret Adams, Ltd.
Richard Astor
J. Michael Bloom
D.M.I. Talent Assoc.
Marje Fields
Henderson/Hogan Agency
Jacobson/Wilder
Kahn, Shuman Assoc. Inc.
Oppenheim-Christie
Joel Pitt Agency
Raglyn-Shamsky
Wm. Schuller Agency
Mort Schwartz
Stewart Artists Corp.
Talent Reps.
Jean Thomas
Michael Thomas

Gary Leaverton
Lester Lewis Assoc.
Inc.

TRH Inc.
Bob Waters Agency
Ann Wright

Please be advised that these agents who represent a large number of your members shall henceforth be represented by NATR (already recognized by your sister unions SAG and AFTRA as representing New York Agents) in any future negotiations with Equity.

We are enclosing a statement which clearly sets forth NATR's position on the issues presently dividing us.

Very truly yours,

Ruth L. Lehner
President

cc: Equity Officers
Equity Council

PETITIONERS' EXHIBIT
NO. 71 IN THE DISTRICT COURT

[Actors' Equity Association

Letterhead Omitted In Printing]

* * *

October 11, 1977

Mr. Howard Hausman
Theatrical Artists'
Representatives Association
The William Morris Agency
1350 Avenue of the Americas
New York, New York 10019

Dear Howard:

In addition to the Memorandum of September 12, 1977 (additional copy enclosed) which forms the basis for our final understanding, I will here set forth those ad-

ditional understandings we have reached in the last few weeks, in order to find a resolution to our dispute, and which were approved by the Actors' Equity Association Council at its last meeting of September 27, 1977.

1. It is understood that if, in future, we agree with an agent or group of agents on terms which are more favorable than contained in our understanding with TARA, we will make such more favorable terms available to your members in the same manner as provided to the agent or group of agents.

2. We acknowledge and reinforce our understanding, as described in the September 12 memorandum, that neither party "will unilaterally impose any practice or requirement on the other without prior

agreement." Nevertheless, this understanding does permit, as described in the paragraph immediately preceding it, that the Advisory Committee on Chorus Affairs shall be the final arbiter in determining whether, after conversion from Principal to Chorus contract, an agency commission may continue to be paid.

3. In accordance with my commitment, we here set forth the rules governing run-of-the-play contracts. A R-O-P contract can be executed only on the form provided by Equity in accordance with its agreement with the League of New York Theatres and Producers Inc. A copy of the form is attached. The deletions and amendments appearing on the form are in the process of being printed as part of the new form agreed to by the League and Equity. A R-O-P contract is usually executed for a

fixed period of a year or less. However, the compensation must be at least $75 above the standard minimum. If an agent secures the execution of a R-O-P contract for an Equity member, the agent may collect a 10% commission for the duration of the engagement. A R-O-P contract may also be executed for in excess of a year. This is not an infrequent arrangement for stars. In such instances, the Producer is required to post additional bond in order to assure payment of the required periods of guarantee. See Production Rule 19G. In the event of a breach by the employer of a R-O-P contract, the Actor is entitled to continue to receive his contractual salary and, of course, the agent his commission. As a matter of policy, Equity will not accept contracts for a fixed period of more than four weeks unless the R-O-P premium is included in the actor's

compensation. Finally, it should be stressed that whether or not a R-O-P contract is signed, if the agent has succeeded in negotiating a contract which is at least 20% above the minimum, he is entitled to a 10% commission for as long as the actor may be employed in the play.

4. TRANSITION PERIOD. For contracts which were executed prior to July 15, 1977 and subsequent to May 1, 1977, Equity agrees that the Agency Regulations in force on May 1 will govern the payment of commissions. Thus, if a contract had been executed on July 10 calling for a salary of $325 per week, the agent would be entitled to a commission of $32.50 per week for ten weeks. This would be so because the negotiated salary was only $40 above the then minimum ($285), and therefore less than the 20% required to collect

commissions for the duration of the engagement. Note, too, that the weekly payment of $32.50 does not reduce compensation below $285, the only guide for reckoning the minimum Production salary at that time. The fact that the actor's effective salary would be $355, because of the successful AEA negotiations would have no effect on the payment of commissions. If, on the same date, due to an agent's actions, the actor executed a contract for $350, which is more than 20% above $285, the agent would be entitled to collect a commission of $35 per week for the duration of the actor's engagement. Of course, not being on a Run-of-the-Play contract, the actor would be able to terminate within two weeks. The final example would be where a Run-of-the-Play contract is executed on July 10 which, at the minimum, would call for a salary of $335 per

week ($285 plus $50 premium for Run-of-the-Play). Under such an arrangement the agent collects $33.50 per week for the duration of the engagement. The actor's effective salary, however, would be $430 ($355 minimum plus $75 premium for Run-of-the-Play). It need be stressed that the Council's acceptance of this arrangement carries with it the proviso that no such accommodation can be granted in the future. Thus, if an agent wishes to assure that he will not lose commission because of increases in the Equity minimums, he must negotiate into the employment contract a provision which raises his client's salary by at least as much as would be required to keep the actor's salary 20% above the new minimum of 10% is to be collected for the duration of the agreement. Where an actor's salary is close to what will be the new minimum in

1979 ($400), unless the agent includes a provision which, proportionately or by a fixed sum, raises his client's salary on the anniversary date of the contract, he may lose or have diminished his commission to the extent that it might invade the Equity minimum.

These are the four items which we have previously discussed and which the Council has expresly approved. I might add that I informed the Council on October 4 when these matters were discussed that the TARA representatives would recommend adoption by TARA members at its meeting to be held this week.

In order to be sure that nothing is allowed to fall between the cracks, I am enclosing a copy of my April 18, 1977 letter to franchised agents. It is accurate ex-

cept insofar as the memorandum of September 12 or anything else contained herein may have modified it. I am also enclosing the Agency Authorization and Exclusive Management Contract, the only two forms we are now accepting from franchised agents. These forms have been in use for several months now and appear to be practical. I know you have expressed some reservations about paragraph 6(b) of the Exclusive Management Contract indicating that the paragraph may suffer from imprecision. While I cannot share your concern, I agreed that we would be amenable to amendments which would clarify the intent of paragraph 6(b). It is certainly not our purpose to permit either agents or actors to use strategems to avoid the mutual responsibilities of that section.

With TARA's approval of all the foregoing, I would hope that we may promptly

reduce to written form a provision of the Agency Regulations which will be mroe understandable than the late Rule A. When we complete that task we will promptly transmit the Regulations to you for your comments, since it is our intention to solicity your assistance in making the new Agency Regulations workable. I do not foresee any serious problems in the area of language since I believe we will have agreed on all the principles involved in this controversy.

Sincerely,

Donald Grody
Executive Secretary
/s/Don
DG/ra
encs.
cc: Jerome B. Lurie, Esq.
Harriet Slaughter

[Actors' Equity Association Letterhead Omitted In Printing]

* * *

Sept. 12, 1977

MEMORANDUM

Subject: THE STATUS OF DISCUSSIONS BETWEEN EQUITY AND TARA

BACKGROUND AND EXPLANATION OF NEW PROVISIONS IN AGENCY RULES AND REGULATIONS

Effective May 1, 1977 specific changes were made in the Rules and Reg-

ulations Governing Agents (formerly known as Rule A).

Commissions: The maximum commission payable to an agent shall be 10% (5% for Off-Broadway) of the salary paid the actor under his Equity individual employment agreement. Such commission shall be payable for a period of 10 weeks only, unless the agent shall have negotiated a salary which is at least 20% above the minimum salary required to be paid under the Equity applicable rules.

If the actor's salary is at least 20% above the required minimum, then the commission shall be payable for the length of actor's engagement, except that the period under a LORT Contract shall not be for longer than 6 months. (Note: LORT rehearsal salary must be the same as contractual salary.)

A 10% commission shall be permitted under the Off-Broadway Contract only if the commissionable salary is in excess of the Production Contract minimum.

On August 2, 1977 the Council of Actors' Equity Association resolved to include in the new Agency Rules and Regulations that 10% commission shall be payable for the life of the contract on run-of-play contracts, not to invade the established minimum.

BROADWAY		OFF-BROADWAY	
$355.00	Minimum	$175.00	Minimum Payment of Broadway minimum in order to sign run-of-play
75.00	Premium		
$430.00	- $43.00 commission for life of contract	$355.00	- $35.50 commission for life of contract

NOTE: There are only three run-of-play contracts: Broadway, which has $75.00 a week premimum, Off-Broadway, which carries the Broadway minimum as the premium and Dinner Theatre with $100.00 premium.

Run-of-play which carries a premium should not be confused with length of engagement i.e.: Stock productions may run no longer than 8 week at any one theatre without the express permission of Equity. LORT Contracts have the option of an "open end run or a specific length of engagement." Dinner Theatre Contracts may carry "tour riders" for performance at several locations.

RECENTLY NEGOTIATED CONTRACTS

Three Equity contracts now provide for the producer to pay commissions, CORST, COST and Special Production. While there is no specific language in the employment contract which places a limitation on the time a commission must be paid, there were discussions at the negotiating table in regard to a 10 week period. Equity cannot now change the intent of those negotiations and impose a new set of regulations for producers when the new Agency Regulations specifically state 10% commission for 10 weeks, except where 20% over minimum is negotiated or in the case of run-of-play contracts. The language in each of the contracts is set forth below:

CORST: When a contract is negotiated by an Agent and said Agent is the Agent of record on the face of the contract, any commission payable which would invade minimum salary must be paid by the Producer.*

CORST: X Company Minimum $250.00
*$25.00 for 10 weeks

Y Company Minimum $199.00
*$19.90 for 10 weeks

Z Company Minimum $180.00
*$18.00 for 10 weeks

COST: When a contract is negotiated by an Agent and said Agent is the Agent of record on the face of the contract, the Actor shall be reimbursed for commissions paid to such

Agency on account of invasion of minimum salary to the extent of five (5%) percent of the minimum. The intention of this rule is solely to prevent the invasion of the minimum salary and it shall not be construed to imply that the Producer is accepting the obligation to pay commissions to Agents on behalf of Actors.*

COST: Minimum $241.00 *$12.05 for 10 weeks

SPECIAL PRODUCTION: When a contract is negotiated by an Agent and said Agent is the Agent of record on the face of the contract, any commission payable which would invade minimum salary must be paid by the Producer."

SPECIAL PRODUCTION: Minimum $205.00

*$20.50 for 10 weeks

MODIFICATIONS OF AGENCY REGULATIONS APPROVED BY COUNCIL AUGUST 2, 1977

1) When a rehearsal salary is negotiated by the agent that is in excess of the Equity minimum, it shall be commissionable as per commission rates established, 10% not to invade the minimum. The Council further resolved that the new Agency Rules be in effect for a 5 year period.

2) A notice requesting discussion of change may be given by TARA or Equity after 4 years. Six months after first notice, if TARA or Equity is not satisified with discussion, two years notice of termination of the Agency Rule and Ex-

clusive Management and Agency Authorization Contracts may be given by either side.

3) At the same Council meeting the Council rejected the Agency Committee's recommendation to send a referendum to the Equity membership to vote that either 1) all agents be required to hold Open Interview Hours and that 5% commission for 10 weeks would permit invasion of minimum or, 2) that there be no invasion of minimum and no agent shall be required to have Open Interview hours for AEA members.

NOTE: (Were such a referendum to be sent out Equity could not distinguish between Chorus and non-Chorus since they are not separately identified on membership rosters. Since the absorption of Chorus

Equity into AEA in 1955, there are no Chorus Equity members. Any member of Equity from time to time may perform under a Chorus Contract.)

FRAMEWORK FOR REVIEWING PRINCIPAL CONTRACTS CONVERTED TO CHORUS

The Advisory Committee for Chorus Affairs has agreed to put into effect on a trial basis for one year that ACCA consider on an individual basis for final determination as to whether an agent will be allowed to collect applicable commissions from an individual Equity member in orginally conceived productions under the Production Contract which contract has been converted from PRINCIPAL to CHORUS. This procedure will be re-examined after the period of one year.

OTHER AREAS OF AGREEMENT BETWEEN EQUITY AND TARA

1) Equity has agreed that neither TARA or Equity will unilaterally impose any practice or requirement on the other without prior agreement.

2) The emergency contract procedure has been agreed between the two parties.

3) Commission Disputes Collections: Equity has agreed to use its internal disciplinary powers to aid in the collection of commissions which are clearly, in the view of Equity, due to the agent or to which the agent is entitled by an arbitration award.

4) Termination of Agency Contracts: a) If during any ninety (90) days period the Agent fails to secure for the Actor a bona fide offer of employment from an employer commensurate with the Actor's prestige for at least four weeks at the Actor's customary salary, which offer is communicated by the Agent to the Actor in reasonable detail and in writing, then in such case the Actor shall have the right to terminate this agreement by notice in writing to the Agent and to Equity.

b) The ninety (90) day period described above shall be extended during any period when (i) the Actor has notified the Agent in writing of his unavailability; (ii) the Actor is employed and is therefore unavailable; and (iii) the Actor is unable to respond to a call for his ser-

vices by reason of mental or physical incapacity.

c) No termination under this paragraph shall deprive the Agent of the right to receive commissions on monies earned or received by the Actor prior to the date of termination or earned or received by the Actor after the date of termination of the Agent's agreement on contracts for the Actor's services entered into by the Actor prior to the effective date of any such termination.

5) Termination For Other Reasons: The Actor and Agent may agree that one or more persons individually named on the face of the Exclusive Managerment Contract shall represent the Actor and in the event such person or persons listed on the contract discontinues his relationship

with the Agency, the Actor then has the right to terminate that agreement.

A careful evaluation of the name or names to be placed on the face of the contract should be considered, there being no requirement that any name be inserted.

6) Franchise Fees: The new franchise fee for new agents $200.00 and an annual renewal fee of $60.00 for franchised agents and $40.00 a year for subagents.

UNRESOLVED MATTERS

Two outstanding items to be resolved between the parties are 1) Open Interview Hours for New York agents who obtained their franchises prior to 1969. Both parties have agreed that a continuing con-

versation and exchange of thoughts and modification of the Open Interview Hours should be the first order of business in terms of arriving at a principle whereby actors have accessibility to all agents without placing an unfair burden on the time of agents. 2) TARA has submitted that a few TARA members are seeking a transitional rule to protect agent's commission in those instances where the Equity-bargained increase in minimums would vitiate the agent's right to collect commission under the new Agency Rules. Equity has requested that a survey be made to determine the number of instances where agents have lost commissions due to the increase in minimums in the Production Contract. Equity had indicated its willingness to be responsive to the agents if specific numbers and

cases are drawn up by TARA for Equity's consideration.

Equity has pointed out, however, that it will have great difficulty treating generally with this item since Agents currently operating under Equity's regulations have been faced with similar dilemmas and Equity must not treat one group of agents differently than another group which has been operating under the rules as they now exist.

[Actors' Equity Association
Letterhead Omitted In
Printing]

* * *

April 18, 1977

Dear Equity Franchised Agent:

We have important news to announce to you concerning amendments to Equity's Agency Regulations which will, we believe, protect our members more fully and at the same time make equitable adjustments in the commissions you may legitimately expect from our members.

By its action of April 12, 1977, the Council of Actors' Equity Association approved the following commission rates:

1. Commissions shall be 10% of gross salary, including every form of compensation the actor may receive under his Equity Individual Employment Contract, collectible for a period of 10 weeks; provided, however, that such 10% commission may not invade the minimum scale negotiated for our members under any contract.

2. Commissions for Off Broadway shall be 5% of gross salary, including every form of compensation the actor may receive under his Equity Individual Employment Contract, collectible for a period of 10 weeks; provided, however, that such 5% commission may not invade the minimum scale negotiated under the Off Broadway contract. If a salary is

negotiated in excess of the Production Contract minimum, then a 10% commission may be required, provided that the Production minimum is not invaded.

3. In the event the agent can negotiate compensation at least 20% over scale in the specific contract, the appropriate commission may be collectible for the period of the actor's employment under that contract, except in LORT, where the period shall not exceed six months.

4. Equity-negotiated out-of-town expense money is not commissionable in any way.

5. No commissions shall be permitted under the COLT, HAT/BAT,

Theatre for Young Audiences or Mini Contracts.

6. No commissions shall be permitted under chorus contracts.

7. Commissions are not permissable during the rehearsal period except under the Industrial Shows Contract.

Please be reminded that these decisions were reached after a national referendum of our members and after prolonged debate among the membership, at membership meetings and within the Council. We should like to put the new commission rates into effect as soon as possible. However, it is necessary that our members be advised. This information will be contained in a special mailing to our members which should be in their hands by April 25.

Therefore, the effective date of the new commission schedule will be May 1, 1977. Individual Equity employment contracts entered into on and after that date will be subject to the new rates.

In addition, there are certain obligations which will be binding upon each and every franchised agent, such as:

1. The requirement that interviews be held with our members for a total of at least two hours each and every week.

2. The right of Equity to revoke a franchise for cause. These will be internal union proceedings, with a final decision to be rendered by the Council and subject to binding arbitration, if required.

3. There will be a Disputes Settlement Procedure Under the aegis of Equity's Agency Committee.

4. There will also be a procedure for the settlement of disputes on failure to pay commissions. If the Agency Committee or the Council are unable to resolve the matter, then it may be submitted to impartial and binding arbitration.

5. In order to terminate an agreement with an agent for the agent's failure to offer suitable employment, the actor must show that in the preceding 90 day period the actor has not been offered employment in the legitimate theatre at his usual salary for a minimum of four weeks. Naturally the unavailability of the

actor has the effect of staying the 90 day period.

Other miscellaneous provisions of the new Agency Regulations will:

1. Formally require the use of Equity's "Emergency Contract Procedure in situations where it is impossible to execute a standard Equity employment contract.

2. Agency franchise fees will be increased to $60 per agent, $40 for each sub-agent. A new agents' franchise will cost $200. Naturally, agents who have already paid their fees will not be required to pay anything additional this year.

3. There will be arrangements made for the merger and consolidation of agencies and also for the right of Equity members to withdraw from their agency agreements if the effect of the merger or consolidation will leave the member in a disadvantageous position or where he will no loner be represented by the agent he had originally bargained for. Naturally, this is a complicated provision and we will attempt as soon as possible to set it down with precision and clarity.

4. Agencies will be required every six months to provide an updated list of its clients to Equity, the content of which will be made available to all Equity members.

5. Equity will strictly enforce the requirement that only franchised agents, and no others, shall be allowed to negotiate contracts for Equity members.

6. There will be a provision which will make clear that if a franchised agent surrenders his franchise or has his franchise revoked, all existing agency agreements with Equity members will be null and void forthwith.

Obviously, there are some provisions stated which will not be entirely clear to everyone. They will require careful drafting and efforts will be made to make the language as clear as possible. To that end, Equity has immediately undertaken the entire revision of what has for-

merly been known as Rule A. We will hope to have the new Agency Regulations in your hands and available to our members as soon as possible, and we ask your forbearance in the meantime.

We ask your cooperation in the meantime and wish to thank you for your patience during these difficult times. We hope your relationship with Equity and our members will be long and prosperous. We promise you that your just grievances will be dealt with promptly and we will seek your cooperation in enacting legislation at the State levels which will both protect your interests and safeguard our members from the nefarious practices of a few.

Most sincerely yours,

/s/Donald Grody

Donald Grody

Executive Secretary

DG/ra

* * *

PETITIONERS' EXHIBIT
NO. 72 IN THE DISTRICT COURT

[Theatrical Artists Representatives Association, Inc. Omitted In Printing]

October 13, 1977

Mr. Donald Grody
ACTORS' EQUITY ASSOCIATION
1500 Broadway
New York, N.Y.

Dear Don:

This is to inform you that Theatrical Artists Representatives Association, Inc., at its membership meeting on October 12, 1977, has agreed to the terms for modifying RULE A as laid out in your letter of October 11, and your previous memorandum of September 12, 1977.

We understand that the text of the modification of RULE A will be worked out

mutually, and such matters as the substance of Paragraph 6 of the Exclusive Management contract, and the overall form of the Exclusive Management contracts, and the Agency Authorization for a specific Engagement, which you attached to your letters, will be modified mutually.

We shall now tell those of the TARA members who accept TARA's recommendation, and wish to be franchised, to proceed with the re-signing of Equity members, and we both agree such re-signings will be deemed as ordinary and timely renewals.

To expedite technical arrangements, you will send me a simple, brief form letter, under which all TARA members previously franchised who wish to do so, will subscribe now to the new arrangement, subject to the working out of detailed language in the near future. If you form

for such a letter reaches me Monday, we will immediately send such letter to TARA's members, to sign and return individually to Equity.

With respect to all such signatories, it is our understanding that no reprisals will be taken either way between the agents involved and Equity for anything occurring between January 6 and October 15, 1977.

Yours very truly,

THEATRICAL ARTISTS
REPRESENTATIVES
ASSOCIATION, INC.

/S/ Howard Hausman

By: Howard Hausman,
Secretary

cc: ROBERT LANTZ, President

RESPONDENTS' EXHIBIT
K-1 IN THE DISTRICT COURT

[Actors' Equity Association

Letterhead Omitted In Printing]

* * *

EXCLUSIVE MANAGEMENT CONTRACT

UNDER EQUITY AGENCY REGULATIONS

THIS AGREEMENT, made and entered into between....., an Equity Franchised Agent ("Agent") and ....., an Equity Member ("Actor") in accordance with the Equity Rules and Regulations ("Regulations").

1. The Agent shall be the Actor's sole and exclusive agent in the legitimate theatre industry. This contract is limited to the legitimate theatre in-

dustry and to contracts of the Actor as an actor in said industry. The Actor warrants he has the right to sign this agreement and has no other agreement in effect which is in conflict herewith. The Agent and the Actor are both bound by the provisions of the Regulations which govern the relations of the members of Actors' Equity Association as actors with agents. Said Regulations, as they exist and as they may be amended by Equity from time to time, are hereby incorporated herein by reference, as if fully set forth and made a part of this agreement.

2. The term of this contract shall be for a period of .... (not in excess of 5 years) commencing ....., 19.... . The initial contract between

Actor and Agent shall not be for more than one year.

3. (a) COMMISSIONS. The maximum commission payable to the Agent shall be 10% (5% for Off Broadway and Special Production) of the salary paid the Actor under his Equity individual Employment Agreement. Such commission shall be payable for a period of ten weeks only, unless the Agent shall have negotiated a salary which is at least 20% above the minimum salary required to be paid under the applicable Equity collective bargaining agreement. If the Actor's salary is at least 20% above the required minimum, then the commission shall be payable for the length of the Actor's engagement, except that the period under a LORT contract shall not be for longer than six months. A 10% commission shall be permitted under

the Off Broadway Contract, and Special Production Contract only if the commissionable salary is in excess of the Production Contract minimum and complies in all other respects with this paragraph.

(b) NO INVASION OF SCALE. The collection of a commission shall in no circumstance be allowed to reduce the Actor's compensation below the Equity negotiated minimum salary.

(c) NO COMMISSION ON OUT-OF-TOWN EXPENSES. Under no circumstances shall a commission be collected upon out-of-town expenses required to be paid under an Equity collective bargaining agreement.

(d) NO COMMISSION PERMITTED. Commission shall not be allowed under any of the following Equity contracts:

Theatre for Young Audiences (Children's Theatre), Hollywood Area Theatre and Bay Area Theatre (HAT/BAT), Chicago Off-Loop Theatre (COLT), Mini-Contract, and all casual contracts, provided however that the payment of commission shall be permitted in all but Children's Theatre if the commissionable salary is in excess of the Production Contract minimum and complies in all other respects with this paragraph.

(e) NO COMMISSION ON CHORUS CONTRACTS. Commission shall not be allowed under any Chorous Contract of Employment.

(f) NO COMMISSION ON REHEARSAL SALARY. Commission shall not be followed for the rehearsal period except under the Industrial Shows Contract.

(g) RESPONSIBILITY FOR PAYMENT. Commissions shall be payable when and as monies or other considerations are received by the Actor or by anyone else for or on the Actor's behalf. Such commissions shall be payable by the Actor to the Agent, as aforesaid, during the term of the contract and thereafter only as specifically provided herein or in the Regulations.

4. Should the Agent negotiate a contract of employment for the Actor and secure for the Actor a bona fide offer of employment, which offer is communicated by the Agent to the Actor in reasonable detail and in writing, which offer the Actor declines, and if, after the expiration of the term of this agreement and within 60 days after the date upon which the Agent gives such written information

to the Actor, the Actor accepts said offer of employment on substantially the same terms, then the Actor shall be required to pay commissions to the Agent upon such contract of employment. If an agent employed under a prior agency contract is entitled to collect commissions under the foregoing circumstances, the Agent with whom this contract is executed waives his commissions to the extent that the prior agent is entitled to collect the same.

5. TERMINATION OF AGENT'S SERVICES. The Actor may, at any time, by notice in writing to the Agent and to Equity, instruct the Agent that he is prohibited from rendering further services to the Actor and from holding himself out as the Actor's agent. This shall not affect the right of the Agent to collect commissions during the term of this agreement.

6. TERMINATION OF AGREEMENT.

(a) If during any ninety (90) day period the Agent fails to secure for the Actor a bona fide offer of employment from an employer commensurate with the Actor's prestige for at least four weeks at the Actor's customary salary, which offer is communicated by the Agent to the Actor in reasonable detail and in writing, then in such case the Actor shall have the right to terminate this agreement by notice in writing to the Agent and to Equity.

(b) The ninety (90) day period described above shall be extended during any period when (i) the Actor has notified the Agent in writing of his unavailability; (ii) the Actor is employed and is therefore unavailable; and (iii) the Actor is unable to respond to a call for

his services by reason of mental or physical incapacity.

7. RELIANCE UPON SPECIFIC REPRESENTATION

If agent agrees in writing that Actor shall be entitled to the specific services of any agent or agents named below, as a condition of this agreement, Actor may terminate if such agent or agents cease to be available to render such services. This paragraph applies only if initialed below by Agent:

....

....

8. Any controversy under this contract, or under any contract executed in renewal or extension hereof or in substitution herefor or alleged to have been so executed, or any controvesy as to the existence, execution or validity hereof or thereof, or the right of either party to void this or any such contract or alleged contract on any grounds, or the construction, performance, non-performance, operation, breach, continuance or termination of this or any such contract, shall be determined in accordance with the Regulations.

9. The Agent agrees, convenants, represents and warrants as follows:

(a) to be available at all reasonable times for consultation with the Actor in the city or cities named herein

during reasonable hours, subject to absence of the person or persons from the office occasioned by business activities outside the office, and subject further to reasonable absences due to illness or reasonable vacation periods.

(b) to maintain an office and telephone open during all reasonable business hours (emergencies such as sudden illness or death excepted) within the city (cities) of ...., or its environs, throughout the term of this agreement and that some representative of the Agent will be present at such office during business hours.

(c) to counsel and advise the Actor in matters which concern the Actor's professional interest in the legitimate theatre industry.

(d) to be truthful in his statements to the Actor.

(e) not to conceal facts from the Actor, in the performance of this contract, which are pertinent and which the Actor is entitled to know.

(f) to use all reasonable efforts to assist the Actor in procuring employment for the services of the Actor in the legitimate theatre industry.

(g) to maintain the relationship of a fiduciary to the Actor. When instructed by the Actor not to give out information with reference to the Actor's affairs, the Agent will not disclose such information.

(h) not to engage in dishonest or fraudulent practices in making or entering into this contract or the performance thereof.

(i) to consider only the interest of the Actor in any dealings for the Actor pursuant to this contract, and never to consider or act in the interest of the Agent or any producer when such interests are opposed to the interests of the Actor.

(j) to make no binding engagement or other commitments on behalf of the Actor without the approval of the Actor and without first informing the Actor of the terms and conditions of such engagement or commitment.

(k) to be equipped and to continue to be equipped to represent the Actor ably and diligently in the legitimate theatre industry throughout the terms of this contract, and to so represent the Actor. The Agent's duties shall include the full representation of the Actor in his career in the legitimate theatre industry and are not limited to securing employment.

(l) as to the payment of compensation the Agent shall be obligated to serve the Actor and perform obligations as required herein with respect to any employment contract or to any employment requiring the services of the Actor on which such compensation is based.

10. The Agent may represent actors of the same general qualifications and elig-

ible to perform the same parts or roles, and such representation shall not constitute a violation of the Agent's obligations hereunder. The Agent agrees that prior to the execution of this contract, if the Actor so requires, the Agent will deliver to the Actor a list of the actors of the same qualifications and eligible for the same parts or roles represented by the Agent.

11. Any situation or circumstance not expressly covered in this agreement or in the Regultions shall be subject to final determination by Equity.

12. FOR CALIFORNIA ONLY.

This provision is inserted in this contract, pursuant to regulations of ACTORS' EQUITY ASSOCIATION, a bona fide

labor union, which regulations govern the relations of its members to employment agencies and artists' managers. Reasonable written notice shall be given to the Labor Commissioner of the State of California of the time and place of any arbitration hearing hereunder. The Labor Commissioner of the State of California or his authorized representative, has the right to attend all arbitration hearings. The clause relating to the Labor Commissioner of the State of California shall not be applicable to cases not falling under the provisions of Section 1700.45 of the Labor Code of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the ..... day of ....., 19...,

NOTE: *In order to be valid, the Actor must receive a copy. No commission shall be paid unless a copy is on file with Equity. One copy to be given to Actor.

..... ACTOR

**Copy to be filed by Agent with Equity immediately after execution.

..... AGENT

THIS ARTISTS' MANAGER IS LICENSED BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA. This artists' manager is franchised by the Actors' Equity Association. This form of contract has been approved by the Labor Commissioner of the State of California on November 21, 1977.

RESPONDENTS' EXHIBIT K-2
IN THE DISTRICT COURT

[Actors' Equity Association Letterhead Omitted In Printing]

* * *

AGENCY AUTHORIZATION FOR A SPECIFIC ENGAGEMENT UNDER EQUITY AGENCY REGULATIONS

THIS AGREEMENT, made and entered into between..... an Equity Franchised Agent ("Agent") and....., an Equity Member ("Actor") in accordance with the Equity Agency Regulations ("Regulations").

1. The Agent shall be the Actor's sole and exclusive agent to negotiate for and on behalf of the Actor with the Producer hereinafter named for the rendition of Actor's services as an actor in the play or plays hereinafter named. The Actor

warrants he has the right to sign this agreement and has no other agreement in effect which is in conflict herewith. The Agent and the Actor are both bound by the provisions of the Regulations, which govern the relations of members of Actors' Equity Association as actors with agents. Said Regulations, as they exist and as they may be amended from time to time, are hereby incorporated herein by reference, as if fully set forth and made a part of this agreement.

2. (a) Name of play (or plays) or theatre.....

.....

(b) Name of the producer.....

3. (a) COMMISSIONS. The maximum commission payable to the Agent shall be 10% (5% for Off Broadway and Special Production) of the salary paid the Actor

under his Equity Individual Employment Agreement. Unless the salary is at least 20% above the minimum salary required to be paid under the applicable Equity collective bargaining agreement or a Run-of-the-Play contract has been executed, such commission shall be payable for a period of ten weeks only. If the Actor's salary is at least 20% above the required minimum, or if he is under a Run-of-the-Play contract, then the commission shall be payable for the length of the Actor's engagement, except that the period under a LORT contract shall not be for longer than six months. A 10% commission for the duration of the engagement shall be permitted under the Off Broadway Contract, and Special Production Contract only if the commissionable salary is in excess of the Production Contract minimum. Commission shall not be allowed

for the rehearsal period except under the Industrial Shows Contract or where the rehearsal salary exceeds the applicable Equity minimum.

(b) NON COMMISSIONABLE. Commission shall not reduce the Actor's pay below the applicable minimum, nor apply to the collectively bargained out of town expenses, nor be allowed under any of the following Equity contracts: Theatre for Young Audiences (Children's Theatre), Hollywood Area Theatre and the Bay Area Theatre (HAT/BAT), Chicago Off-Loop Theatre (COLT), Mini Contracts, and all casual contracts, provided however that the payment of commission shall be permitted in all but Children's Theatre if the commissionable salary is in excess of the Production Contract minimum. Commission shall not be allowed under any Chorus Contract.

(c) RESPONSIBILITY FOR PAYMENT. Commissions shall be payable when and as monies or other considerations are received by the Actor or anyone else for or on the Actor's behalf. Such commission shall be payable by the Actor to the Agent, as aforesaid, pursuant to this contract and thereafter only as specifically provided herein or in the Regulations. Commissions shall also be payable for any Equity employment contracts entered into during the term of this agency agreement and for the duration of such Equity contracts, as well any modifications, extensions or renewals or substitutions thereof except as otherwise specifically provided in the Regulations.

4. Should the Agent negotiate a contract of employment for the Actor and secure for the Actor a bona fide offer of employment, which offer is communicated

by the Agent to the Actor in reasonable detail and in writing, which offer the Actor declines, and if, after the expiration of the term of this agreement and within 60 days after the date upon which the Agent gives such written information to the Actor, the Actor accepts said offer of employment on substantially the same terms, then the Actor shall be required to pay commissions to the Agent upon such contract of employment. If an Agent employed under a piror agency contract is entitled to collect commissions under the foregoing circumstances, the Agent with whom this contract is executed waives his commissions to the extent that the prior agent is entitled to collect the same.

5. TERMINATION OF AGENT'S SERVICES. The Actor may, at any time, by notice in writing to the Agent and to Equity, instruct the Agent that he is prohibited

from rendering further services to the Actor and from holding himself out as the Actor's agent. Despite the foregoing, should the Actor obtain the employment covered by this agreement within six months of the date of execution of this agreement, he shall not be relieved of the obligation to pay the commissions provided for herein.

6. Any controversy under this contract, or under any contract executed in renewal or extension hereof or in substituion hereof or alleged to have been so executed, or any controversy as to the existence, execution or validity hereof or thereof, or the right of either party to void this or any such contract on any grounds, or the construction, performance, non-performance, operation, breach, continuance or termination of this or any such contract, shall be determined in accordance with the Regulations.

7. The Agent agrees, convenants, represents and warrants as follows:

(a) to be available at all reasonable times for consultation with the Actor in the city or cities named herein during reasonable hours, subject to absence of the person or persons from the office occasioned by business activities outside the office, and subject further to reasonable absences due to illness or reasonable vacation periods.

(b) to maintain an office and telephone open during all reasonable business hours (emergencies such as sudden illness or death excepted) within the city (cities) of..... or its environs, throughout the term of this agreement and that some representative of the Agent will be present at such office during business hours.

(c) to counsel and advise the Actor in matters which concern the Actor's professional interest in the legitimate theatre industry.

(d) to be truthful in his statements to the Actor.

(e) not to conceal facts from the Actor, in the performance of this contract, which are pertinent and which the Actor is entitled to know.

(f) to use all reasonable efforts to assist the Actor in procuring employment for the services of the Actor in the legitimate theatre industry.

(g) to mainteain the relationship of a fiduciary to the Actor. When instructed by the Actor not to give out information with reference to the Actor's affairs, the Agent will not disclose such information.

(h) not to engage in dishonest or fraudulent practices in making or entering into this contract or the performance thereof.

(i) to consider only the interest of the Actor in any dealings for the Actor pursuant to this contract, and never to consider or act in the interest of the Agent or any producer when such interests are opposed to the interests of the Actor.

(j) to make no binding engagement or other commitments on behalf of the Actor without the approval of the Actor and without first informing the Actor of the terms and conditions of such engagement or commitment.

(k) to be equipped and to continue to be equipped to represent the Actor ably and diligently in the legitimate theatre industry throughout the term of this contract and to so represent the Actor. The

Agent's duties shall include the full representation of the Actor in his career in the legitimate theatre industry and are not limited to securing employment.

1. as to the payment of compensation the Agent shall be obligated to serve the Actor and perform obligations as required herein with respect to any employment contract or to any employment requiring the services of the Actor on which such compensation is based.

8. The Agent may represent actors of the same general qualifications and eligible to perform the same parts or roles, and such representation shall not constitute a violation of the Agent's obligations hereunder. The Agent agrees that prior to the execution of this contract, if the Actor so requests, the Agent will deliver to the Actor a list of the actors of the same qualifications and eligible

for the same parts or roles represented by the Agent.

9. Any situation or circumstance not expressly covered in this agreement or in the Regulations shall be subject to final determination by Equity.

10. FOR CALIFORNIA ONLY.

This provision is inserted in this contract, pursuant to regulations of ACTORS' EQUITY ASSOCIATION, a bona fide labor union, which regulations govern the relations of its members to employment agencies and artists' managers. Reasonable written notice shall be given to the Labor Commissioner of the State of California of the time and place of any arbitration hearing hereunder. The Labor Commissioner of the State of California or his authorized representative, has the right to attend all arbitration hearings. The clauses relating to the Labor Commis

sioner of the State of California shall not be applicable to cases not falling under the provisions of Section 1700.45 of the Labor Code of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the ..... day of ...., 19.....,

NOTE: *In order to be valid, the Actor must receive a copy. No commission shall be paid unless a copy is on file with Equity. One copy to be given to Actor.

**Copy to be filed by agent with Equity immediately after execution.

.....

ACTOR

.....

AGENT

THIS ARTISTS' MANAGER IS LICENSED BY THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA. This artists' manager is franchised by the Actors' Equity Assocaiton. This form of contract has been approved by the Labor Commissioner of the State of California on January 10, 1978.

The International Executive Board is authorized and empowered from time to time, to make such changes, additions or modifications to such plan and to such form of license on the recommendation of the President or as to it, may seem desirable. All of the provisions of such plan for licenses, as well as any and all changes, additions or modifications, and any rules adopted with respect thereto by the International Executive Board, shall have the force and effect of by-laws, and shall supersede any other conflicting or inconsistent provisions. The foregoing is in confirmation, and not in limitation of, the powers and duties of the International Executive Board or of the President under Article 1, Section 1."

FORM OF LICENSE

LICENSE FROM

AMERICAN FEDERATION OF MUSICIANS

(hereinafter called the "Federation")

---to---

.....

(hereinafter called the "Licensee")

This license shall be deemed an agreement by and between the Federation and the Licensee, authorizing the Licensee to be employed by and act as agent, manager or representative for members of the Federation (hereinafter called "Members") in all cases in which the engagement or employment of such members covers services to be rendered.

The license must be signed by the Licensee, or in the case of a firm or corporation by the authorized officers with the corporate seal attached to the license in case the Licensee is a corporation.

This license is subject to, and limited by, the following terms and conditions:

FIRST: The Licensee shall comply with all of the laws, ordinances and requirements of the different localities applying to such agencies.

SECOND: Within the limitations above mentioned, this license shall cover every phase of musical employment, permanent or otherwise.

THIRD: The Licensee shall not act for any musician, including or involving any musical performance, who is not a member in good standing of the Federation.

FOURTH: This license (which is not exclusive) is personal to the Licensee, shall not be transferable, and no person, firm or corporation other than the one named therein shall be entiteld to any advantage therefrom.

FIFTH: All contracts between the Licensee and Members shall, at all times, be subject to, and bound by, the present and future provisions of the Constitution, By-Laws, Rules, Regulations and Resolutions of the Federation and of all Locals thereof, affected thereby, and all such contracts shall contain the following stipulation:

"The present and future provisions of the Constitution, By-Laws, Rules, Regulations and Resolutions of the Federation and its Locals affected hereby, apply to, and shall govern, this contract, and any stipulations in conflict therewith shall be null and void."

SIXTH: The Licensee will not procure any contract or engagement for any member, unless the same shall contain, the following:

"As the musicians engaged under the stipulations of this contract are members of the American Federation of Musicians, nothing in this contract shall ever be so construed as to interfere with any obligations which

they may owe to the American Federation of Musicians by reason of their prior obligation to the American Federation of Musicians as members thereof."

SEVENTH: The obligations of members to the Federation and to its Locals are in no wise to be changed or affected by this license or by any contract or engagement, and such members shall, at all times, remain subject and be amenable to such Federation and its Locals, the Constitution, By-Laws, Rules, Orders, Resolutions and Regulations thereof.

EIGHTH: The Licensee will not solicit or permit any engagement or employment of members, except strictly in conformity with the rules and wage scales of the Federation and its Locals.

NINTH: The Licensee is not to receive, or be entitled to, any commission or compensation, in any form, in advance and no commission or compensation is to become due or be paid, in any form, at any time before the members concerned receive, in full, payment for their services. In no event, and at no time, shall commissions or compensation of any Licensee, agent or anyone associated or connected with them, singly or collectively, have the effect, directly or indirectly, to reduce the net compensation or pay of any member for his services to less than the minimum scale of pay provided by the Federation or its Locals. The Licensee shall receive no commission or compensation for, or in connection with, employment or engagements at such minimum wage scale, except that such compensation or commissions may be deferred for pay-

ment out of future earnings of such member, to the extent only that such future net earnings exceed the scale. No bonus, gratuity or other subterfuge shall be permitted to circumvent these provisions.

TENTH: The Federation will not countenance any breach by the Licensee or members of any contract conforming to the Federation and Local laws and rules; and will use its best efforts to enforce valid claims by Licensees against members.

ELEVENTH: The Licensee is obligated to furnish to the employer the band or orchestra for which he has contracted with him, and none other.

TWELFTH: The Licensee will keep the Federation informed and advised of all contracts, both oral and in writing, made

by or for members; will submit, upon demand, any and all written contracts to the Federation for its inspection and examination; and will furnish upon such demand, full details and particulars of any and all such contracts not in writing.

THIRTEENTH: This license may be terminated by either party, at any time. Such termination shall not affect any then existing contracts or obligations properly created thereunder, during the existence hereof, except that no such obligation or contract shall have the effect of continuing the agency or other such license. Such right of termination of this license shall be absolute at all times, without cause or reason. In the event of the termination of this license, at any time, for any reason, such license represented by this certificate shall be

returned to the Federation, and cancelled.

FOURTEENTH: The Provisions hereof shall be deemed included in, and part of, any and all agreements between the Licensee and Federation members; and acceptance of this license shall constitute a modifiction of all existing agreements between the Licensee and such members, to accord with the terms hereof.

FIFTEENTH: All members are entitled to equal rights and recognition by employers and Licensees, and no discrimination of any kind or nature, shall be permitted against members. No bonuses, rebates, concessions, favors or inducements, of any kind or nature, to any Licensee or employer or anyone else shall directly or indirectly be given, offered

or permitted by anyone, in any form or manner, with the intention or effect of preferring any one member, or group of members, over others. The purpose hereof is to enable all members to compete with one another, on equal terms.

SIXTEENTH: Any default, dispute, controversy or difference arising between the Licensee and the Federation, any Local or any member or members of the Federation, shall be submitted to, and determined by the International Executive Board of the Federation, and the determination of said Board concerning the matters enumerated above shall be conclusive, final and binding on all connected therewith.

SEVENTEENTH: In the event of any violation of the terms hereof by the Lic-

ensee, and the Federation shall have determined that such violation occurred, each and every member of the Federation shall thereby and thereupon be deemed released and discharged of and from any and all engagements and contracts with the Licensee, and of and from any and all claims, of every kind and nature, by the Licensee, against any member of the Federation.

Dated at New York, N.Y.,
This....day of....., 19...

AMERICAN FEDERATION OF MUSICIANS.

By.....
Licensor

.....[L.S.]

Address.....
Licensee

RESPONDENTS' EXHIBIT AA
IN THE DISTRICT COURT

THE REVOLT
OF THE
ACTORS

BY

ALFRED HARDING

1929

NEW YORK

WILLIAM MORROW & COMPANY

CONTENTS

PART I: THE FIGHT FOR RECOGNITION

PAGE

Chapter I: Stranded three thousand miles from home--As it was in the beginning--What the actors had to stand--The first rebellion against the managers--Setting the stage for Equity 3

Chapter II: Enter the Actors' Equity Association--Equity's first arbitration--Equity arrives with its hat in its hand--And learns that "fine words butter no parsnips"--"A contract for sweet

charity's sake"--Equity
begins to look about
for a club--The genesis
of Equity's policy 15

Chapter III: A flirtation
with organized labor-
-And a qualified proposal-
-The fight for the charter 27

Chapter IV: A standard contract
"signed, sealed and--
"Not delivered--An appeal
to Washington--An indirect
line is sometimes a short
cut--A split in the Council-
-Invincible force and
immovable object 36

Chapter V: Gathering storm
clouds--The ambush at

the Claridge--The break-
-The fight at the Annual
Meeting--"No arbitration"-
-An SOS to labor 51

Chapter VI: The Associated
Actors and Artistes of
America--The battle of
the Century--A final
flag of truce--But Mr.
Albee decides for war-
-And war is declared 66

Chapter VII: War--"Lightnin"
strikes--The managers
explain everything--The
movies walk out on the
producers--The treat
of "the law"--The importance
of Clause Eighteen--The
managers gain ground-

-The first picketing 78

Chapter VIII: Mr. Dillingham takes the count--"Taxi! Taxi!"--First call for a company union--The managers take their hats in hand--Mr. Ziegfeld pulls the first injunction 96

Chapter IX: The Shuberts wave a red flag at labor--The prettiest strikers in history--A letter from Nathan Burkan 107

Chapter X: The Chorus Equity is born--"I will run an elevator," G.M. Cohan--The battle spreads to Chicago--The fight

for the Follies--The
Dramatists would mediate-
-Ziegfeld loses the
Follies 115

Chapter XI: The Winter Garden
suit--The stage hands
set to strike--Strong
arm stuff-Cohan turns
down the Friars--The
response to Sothern's
call--How the managers
received the offer--Untermyer
backs Equity on Clause
Eighteen 128

Chapter XII: The stage hands
and musicians walk out-
-The end of Sothern's
committee--Mr. Klaw rises
to object--The program

for the chorus--Dramatists
offer mediation--The
parade--A contribution
from motion picture actors 141

Chapter XIII: "Equity presents-
-"--The grand finale-
-Legal warfare--When
the Dramatists sat in
judgment--A decision
for neutrality--Equity's
pledge on the closed
shop--What Lee Shubert
heard at the Winter Garden-
-How the actors dealt
with ticket speculators 151

Chapter XIV: Second call
for a company union--
Justice Hendrick wold
settle the strike--The

Actors' Fidelity League-
-"Hail to the King!"-
-A delayed coronation 169

Chapter XV: It seemed quite
simple to Justice Hendrick-
-Fidelity enlists with
the managers--Isaiah's
Bank Account--The injunctions
are argued--The movies
try a fade-out on the
P.M.A.--Cohen waives
Fidelity's crown 180

Chapter XVI: New York State
Federation backs the
actors--Samuel Gompers
lines up with Equity-
-The coronation of George
M. cohan--The great abnegation
scene 192

Chapter XVII: The Hippodrome
becomes a casulty-Surrender
of the Hip--The first
flag of truce--A taste
of victory--The raid
that didn't materialize-
-The fight shifts to
the road--Surface squabbling 206

Chapter XVIII: The peace
terms are drawn-Colby
rewrites the Basic Agree-
ment-The managers explain
their terms--The drive
on the Shuberts--The
P.M.A. sues for peace-
-The final terms--"The
strike is ended"--A cele-
bration nearly wrecks
the peace 222

Chapter XIX: Chicago hears
of the strike--The managers
prepare to meet it -
-Equity's hands are
tied--Berton Churchill
takes command--Strike
headquarters established-
-Hast almost gets by
with "Scandal"--The
parade gets a bad break-
-George C. Tyler defies
the strike--A successful
defiance--The end of
the strike 240

Chapter XX: The situation
in Boston--Will Deming
answers some questions-
-Wilson issues the strike
call--The heroine of
the Boston strike--The

end of the skirmish--
The fruits of the strike 262

PART II: THE LONG, LONG
TRAIL TO EQUITY SHOP

Chapters XXI: The let-down-
-Mopping up--Settling
2,470 claims--A real
chorus organization--
Stopping the drive for
Sunday shows--The first
movie expedition 277

Chapters XXII: A successor
to Frances Wilson - Oppo-
sition to the regular
ticket -The campaign
- The election - Emerson
wins the Presidency 290

Chapters XXIII: The campaign of attrition--The Touring Managers organize--The referendum on Equity Shop - The opposition 300

Chapters XXIV: The war against the Shuberts--The evidence--The Shuberts surrender at discretion--The ballot on Equity Shop--The Equity Shop regulations 309

Chapter XXV: The P.M.A. challenges Equity Shop--The arbitration--Judge Mack's award 319

Chapter XXVI: Equity Shop's first test--Ziegfeld challenges the Eight

performance clause--The
drive for censorship-
-The Citizens' Play Jury-
-The movies draft Will
Hays--Notice as to Equity's
intentions in 1924--A
foreign alliance--Which
leaves the P.M.A. On
"Pins and Needles" 327

Chapter XXVII: The hiring
of Augustus Thomas--Nego-
tiations are begun--Mr.
Thomas shows his mettle-
-Equity decides on a
war chest - The Launching
of Equity Players--"Variety"
prefers serious charges-
-The P.M.A. prepares
for a "National Theatre"-
-Another move for a movie
contract 344

Chapter XXVIII: The battle
over Sunday performances-
-The lineup on the Levy-
Flynn Bill-Albee mixes
in the Sunday fight 357

Chapter XXIX: The indignation
meeting--The negotiations
on Equity Shop--The managers'
proposition--Equity's
counter proposition--
The P.M.A. is shocked-
-The managers try again-
-Equity holds out for
Equity Shop--The P.M.A.
receives the news--The
fate of "The American
National Theatre"--Cooper-
ation lowers the tension-
-Earl Carroll's challenge 365

Chapter XXX The P.M.A. projects a Central Ticket Agency--And a split develops in the P.M.A.--P.M.A. deserters to be thrown to the lions--Collapse of the Central Ticket Agency 388

Chapter XXXI: The beginning of the end--The Atlantic City agreement--The P.M.A. disowns its committee--The fight for pay over broadcasting--Once more the Dramatists' Guild interferes 394

Chapter XXXII: Cleavage in
the P.M.A.--Enter the
Round Robins--Mrs. Fiske
protests--Cohan's clever
demand for arbitration-
-Nathan Miller outlaws
Equity Shop--Equity prepares
for a fight 406

Chapter XXXIII: Will Hays
gives Equity the "Run
Around"--Erlanger's plan
to obviate Equity Shop-
-Equity's retort--Quinquennial
retirement notices--Equity
lines up behind the Council 416

Chapter XXXIV: The 80-20
plan plus new trimmings-
-Cohan's rejoinder--English
actors side with Equity-

-Trading talk--Equity backs down on Equity Shop--The Shuberts are warned of a showdown--Another bid from the Round Robins--The Round Robins are turned down--The P.M.A. decides to fight 429

Chapter XXXV: Birth of the Managers' Protective Association--A ten-minute annual meeting--More light on Mr. Albee's activites--The Amazing performance of Henry Miller--Henry Miller, Equity recruiting officer--The P.M.A. signs a Basic Agreement-Equity's members

hear the terms--The 80-
20 plan is sold 446

Chapter XXXVI: "We don't
care"--Gold star members
of 1924--The Round Robins
are still skeptical--
Charge and countercharge
in the P.M.A.--The Round
Robins take to the courts-
-The trial before Justice
McCook--Equity wins the
first round--The strike
against the Round Robins-
-Equity's annual meeting 465

Chapter XXXVII: Fidelity
into the breach--Discord
in the Round Robin nest-
-And dissent from Lee
Shubert--Gillmore's illness-

-Shubert consents too
late--The Round Robins
surrender at discretion-
-An olive branch to Fidelity-
-The closed plays reopen-
-Fidelity lays its cards
on the table--End of
the Producing Managers'
Association--And a funeral
oration 482

Chapter XXVIII: At the thres-
hold of a new era--How
stock companies benefited-
-Advantages which have
accrued to the tents-
-Some of the material
fruits of victory--An
idealist's decision--
The struggle against
censorship--the first

Play Juries--What happend
to "The Bunk"--The Wales
Act follows "The Captive"-
-A new M.P.A. Basic Agree-
ment and Contract--Equity
initiates an immigration
policy--Equity moves
against the employment
agencies--The agencies
fight back--Some ventures
in cooperation 501

Chapter XXXIX: The campaign
for the motion pictures-
-The battle of the pay
check--The drive for
sound and talking pictures-
-A retreat in good order-
-Unsolved problems 532

Appendix 549

Index 571

* * *

EQUITY MOVES AGAINST EMPLOYEMENT AGENCIES

Not so much could be said of the other policy on which Equity embarked almost simultaneously. For some time the Council had been greately concerned with the number and gravity of the complaints from actors regarding the abuses they encountered when they sought employment through agencies or personal representatives.

On the surface, the plan of the dramatic agency is simple and its proposition fair enough. No actor could hope to keep in touch with all the avenues of employment. Nor is the actor always a good hand at conducting business negotiations. The very qualities which make for artistry in his profession do not help him when it comes to driving a bargain

with the exceedingly shrewd business man a successful producing manager has to be.

The dramatic employment agency, then, aims first to discover what openings there are for actors and what actors are availabe for them; then, to bring actor and manager together; and, if the actor is its client, to secure the best terms possible for him.

Early in the present century the White Rats, then a powerful organization, spent a great deal of money and waged a long campaign to secure the passage of a law through the New York State Legislature to regulate the commission an agency might charge for that service.

The sum finally arrived at as a maximum was half of a week's salary, payable at the rate of five per cent of the salary, during each of the first ten weeks of an engagement.

The agencies were not long in discovering that they could get around the provisions of the law by refusing to apply for the license required of employment agencies, and by calling themselves the "Personal Representative" or the "Manager" of the actor. Such relationships are not regulated by law and they were able to continue to operate with impunity--and without any check on their operations.

With a few notable exceptions, the agencies and personal representatives began to demand ten per cent, or more, of the actor's salary for the entire run of the production, no matter how casual their part in the securing of the engagement might have been.

To some extent, the agencies have claimed, they were forced to make this demand, for certain producing managers were

in the habit of requiring half what the agencies received from the actor for the privilege of casting their productions. Not all of the managers did this, but several Equity investigations over a period of years established the fact that some of the largest and most powerful were guilty of the practice, so there was a certain color to the claim of the agencies in this respect.

In such cases the manager was simply getting a rebate on the salary promised the actor, and the latter was actually paying the manager five per cent, or more, for the privilege of working for him. It was unfair, certainly, but even if the actor suspected it, what could he do about it?

Some of the actors eventually complained to Equity and complained bitterly. The Association appointed a

special committee from the Council and conducted an investigation of the agency situation. All of the agencies were requested to appear before the Council, or its committee, and many of them did so and testified or not as they thought expedient. And from its own members, from managers and from trade papers Equity secured a great mass of information concerning current practices amoung the agencies.

It learned, for instance, that some of the agencies, not content with exacting a ten per cent commission for the life of the contract, were accustomed to receive bonuses at the time an actor registered, and again when the actor signed a contract through their efforts. It was not absolutely required, perhaps, but it was known that there were so many more persons on the agencies' books than there

were places for them that only those actors would be placed in whom the agencies took particular interest. And that bonus was certainly one way to generate such an interest.

There was the case of one agent who turned producer and who, in one or other of his capacities, approached an actress--a member of Equity--for a part in the contemplated production. And when she signed her contract the agent half of the dual personality attempted to claim a commission for placing her with his producer self.

That investigation brought to light the fact that some agencies made a regular practice of covering out of town openings and of hunting up the producer on the morning after with the information that if certain changes were made in the cast--changes which always involved replace-

ments with clients of the agency--the show might still have a chance.

But at the time these facts and others came to light Equity's hands were more or less tied by the terms of its agreement with the Managers' Protective Association, and knowing that action here required a careful and unembarrassed campaign the Association declined to force the issue.

Its failure to move when the investigation had disclosed this state of affairs was not generally understood and on no issue was criticism of the administration more widespread or more bitter than this.

The situation was still more complicated because there were members, some of the them prominent and influential, who had benefited by the existing situation, who found its conveniences out-

weighed its inconveniences and who saw little reason why Equity should mix in the affair and force a change. There were not so many of these actors, but what they had to say often carried considerable authority.*

Just about the time Equity got its negotiations with the Managers' Protective Association in good shape, and the alien actors' policy was on its way to be solved, the New York Agency law was finally and completely knocked into a cocked hat.

The law had, it is true, been more honored in the breach than the observance, but it was the law, nevertheless, and Equity had been considering what it could do to enforce it. Now that was knocked galley west and its knocking was accomplished in this manner:

---

* Equity Magazine, July, 1928, page 8.

New Jersey had a law which was in many respects identical with that of New York. Rupert Ribnik, desiring to establish an employment agency, filed an application complying with the conditions of the statute. The New Jersey Commissioner of Licenses, Andrew F. McBride, believing the fees he had listed for certain positions were too high, refused to issue a license.

Ribnik, claiming that the law creating a scale of fees was unconstitutional, took to the courts to compel the issuance of a license. Through all the courts in the State of New Jersey the battle went uniformly in favor of Commissioner McBride; but Ribnik went right on up to the Supreme Court of the United States and there victory was his and the agency law was sunk to the bottom of the legal seas.

For the majority of the Supreme Court, Justices Holmes, Brandeis and Stone dissenting, on May 28, 1928, held that an employment agent was a broker, a middle man, and that his right to charge what he saw fit for his services was no more to be regulated than the butcher, the apartment house owner and the broker who acted as intermediary between the owner and his tenants. The dissenting Justices pointed out that people seeking work were not as free to look about as tenants, and shoppers, and were often under exceptional economic compulsion to accept whatever terms were offered.* But the majority of the Supreme Court took the legalistic attitude with which courts meet so much social legislation--and there was no appeal from that decision.

---

* Equity Magazine, October, 1928, page 10.

It seemed hardly likely to Equity that the New York law was any more constitutional than that of New Jersey. It was, after all, the purpose of the law, the principle involved, which had been ruled out, not the phraseology of the law, itself.

Nor did it seem probable that the New York agencies would overlook the significance of the decision, or its applicability to their own business ventures. It had removed the last faint, lingering scruple from the agencies which had made a gesture of obedience and those few which actually had been obeying the law could now be undercut with impunity.

Since there was no possibility of a successful recourse to law Equity, as an other occasions, set out to see what it

could accomplish for the protection of its members through Equity Shop.

The heart of Equity's plan was the requirement that each agent and person representative, in order to do business with Equity members should obtain a permit from the Actors' Equity Association. The permit form contained a number of stringent regulations, among which was the setting of five per cent for not more than the first ten weeks of a play's run as the legal maximum for an employment agency.

For a while, during Equity's deliberations there was a tendency to do away with personal representatives altogether. But there were some in the Council who felt that a good personal representative was of real value to an actor--and that there were good conscientious representatives.

But the Council was determined that anyone enjoying that status should be prepared to demonstrate his value. It was decided that only those willing to guarantee an actor a season of at least twenty weeks, at a salary not less than he had averaged for the past three years, might call themselves his personal representative--if the actor was willing to have him in that capacity--and collect ten per cent of his salary for the term of the engagement.

Existing contracts were not to be interfered with, but if an agent or personal representative wished to take out a permit from Equity he must be prepared to modify those contracts to conform to the Equity conditions.

The regulations as thus worked out were approved by the Equity Council meeting of August 7, and were submitted to the

same Equity general meeting which passed upon the Alien Actors' Policy. Not one single voice was raised in opposition when Berton Churchill, Chairman of the meeting, put the question.

The next meeting of the Council set the date of October 9, 1928, as that on which the agency regulations should go into effect.*

THE AGENCIES FIGHT BACK

Many of the agencies and some of the personal representatives hurried into the Equity office and took out these permits. Others, mostly personal representatives, demurred not only at the commissions al-

---

* Equity Magazine, October, 1928, page 31.

lowed by Equity but at certain clauses covering the change or revocation of permits which were undeniably harsh.

This group selected William Edelstein, a Dutch citizen and a resident of England, as the medium for taking the case into Federal Court, rather than the State Courts and secured the legal services of Nathan Burkan, often an opponent of Equity since 1919.

Federal Judge Henry W. Goddard granted a temporary injunction, October 11, 1928, and Equity promptly modified its rulings to exempt Edelstein and his office from the scope of the regulations.

Judge Goddard heard the arguments on both sides on October 19. They were confined entirely to the jurisdiction of the Court. Neither side raised the question as to the necessity for the laws or their fairness as they stood.

Purely on those legal grounds Judge Goddard, on December 4, dismissed the injunction against the Actors' Equity Association, and against all of Equity's Officers, who had been named individually, as such.

But, and this is a point difficult for laymen to understand, although Frank Gilmore, Paul Dullzell and Grant Mitchell, as Officers of the Association, were free to proceed in the enforcement of Equity's agency policies, Judge Goddard held that Edelstein might try for injunctions against them as individuals.

Before he could hear those suits, however, Judge Goddard moved on to other legal pastures and his term in the Federal District Court for Southern New York was taken by the Honorable Frank J. Coleman.

It was Judge Coleman who, on December 28, heard for the first time what the

lawyers term "the merits" of the case. Those are intent of the things people do and the circumstances which, in their opinion, justify their actions.

While this matter was still pending Burkan reached down into his hat and pulled out something quite rare in the way of legal rabbits. It was a petition to the United States Circuit Court of Appeals, praying for a writ of mandamus against Judge Goddard.

Such a writ makes the Judge who rendered the decision a defendant in the case and its granting by the higher court is, in effect, a notice to the trial Judge, to take the suit again -and make the decision right, this time. It is, naturally enough, seldom granted unless the decision of the trial Judge is palpably unfair.

Judge Goddard's decision did not so appear to the Circuit Court of Appeals, consisting at this sitting of Presiding Justice Martin T. Manton and Associate Justices Learned Hand and Augustus N. Hand. They handed down a decision on February 4, 1929, upholding Judge Goddard. And the Supreme Court of the United States refused to review this ruling.

But in the meantime Judge Coleman had granted the injunctions against Gillmore, Mitchell and Dullzell, as individuals, and in a Court Order signed February 1, 1929, forbade them from having anything to do with the agency policies, in their private capacities.

At this stage in the game Equity, and some of its Officers, were free to do anything with regard to the agencies that they might think proper, while other Officers were free officially, but en joined personally. Yet the dividing line

between what they might do as Officers and what they might not do as individuals was so shadowy and ill defined that there was a very decided question as to their freedom of action.

And the path blazed by Edelstein in the Federal Courts might very well be essayed by other agents and personal representatives in State Courts, with the status of Equity's Officers in equal doubt, there.

It was a dilemma in which the Equity Council found all the alternatives very nearly equally unpleasant. Its solution, reached February 5, 1929, was to suspend t e oepration of the regulations against all agents and personal representatives pending an appeal to the Federal Circuit Court of Appeals from Judge Coleman's injunction.*

---

* Equity Magazine, February, 1929, page 8.

Equity proved to be rather more scrupulous than was strictly necessary, in this action, for the decision of this court, handed down August 12, 1929, was a sweeping and unqualified acceptance of Equity's arguments as to the legality of its right to so legislate on behalf of its members and of the manner in which it had done so.

The decision, written by Judge Thomas W. Swan and concurred in by Judge A. N. Hand, with Judge Martin T. Manton dissenting without opinion, was of great interest to Labor circles, because of its willingness to accord social and human rights an equality with property rights--a theory not too widely held by American jurists to date.

* * *

OPINION OF THE COURT OF
APPEALS AFFIRMING THE
DECISION OF THE
DISTRICT COURT DIS-
MISSING PETITIONERS' COMPLAINT

H.A. Artists & Associates,

Inc., et al.,

Plaintiffs-Appellants,

v.

Actors Equity Association,

An Unincorporated Association,

And Donald Grody,

Defendants-Appellees.

---

* * *

Before:

LUMBARD, MANSFIELD, Circuit
Judges and BARTELS,
District Judge.*

LUMBARD, Circuit Judge:

Appellants, theatrical agents who act as intermediaries between actors and producers, appeal from a judgment of the District Court for the Southern District of New York, 478 F.Supp. 496 (1979) (Motley, J.), holding certain practices of defendant union Actors Equity ("Equity") immune from challenge under the antitrust laws because protected by the "statutory labor exemption." We affirm.

---

*Hon. John R. Bartels, United States District Judge for the Eastern District of New York, sitting by designation.

At issue in this case is Equity's system of "franchising" theatrical agents. Agents pay a fee and agree to abide by certain restrictions in return for certification as "franchised" agents. Equity encourages agents to become franchised by forbidding its members to deal with unfranchised agents. Equity members who negotiate contracts using the services of unfranchised agents are subject to union discipline, including fines.

The most important of the restrictions placed upon franchised agents is the requirement that they renounce any right to take commissions on contracts under which an actor receives scale wages. Scale wages are set by a collec-

tive bargaining agreement between Equity and theatrical producers, to which the agents are not parties. To the extent that a contract includes provisions under which an actor will sometimes receive scale pay (as for rehearsal periods and "chorus" employment) and sometimes more, the franchise regulations deny the agent any commission on the scale portions of the contract. Franchised agents are also precluded from taking commissions on certain expense money paid to union members; commissions are limited on wages within 10% of scale pay; and agents must allow actors to terminate a representation contract if the agent is unsuccessful in procuring employment for the actor within a specified period of time.

Some theatrical agents find this system acceptable, and this group which has

formed a trade association called TARA - is not a party in this litigation.

The district court did not reach the question of whether or not the franchise system is an unreasonable restraint of trade, or constitutes per se illegal price-fixing, because it found that the union's actions in creating and maintaining the franchise system were fully protected by the "statutory" labor exemption from the antitrust laws, which removes from antitrust scrutiny unilateral action by a labor union pursuing the interests of its members. The "statutory" exemption has its source in judicial readings of sections 6 and 20 of the Clayton Act, 15 U.S.C. §17, 29 U.S.C. §52 and of the Norris-LaGuardia Act, 29 U.S.C. §§105-115. Under the leading "statutory" labor exemption case of United States v. Hutcheson, 312 U.S. 219, 61 S.Ct. 463, 85

L.Ed. 788 (1941), the threshold issue is whether or not Equity's franchising of agents has involved any combination between Equity and any "non-labor groups" or persons who are not "parties to a labor dispute." Id. at 232, 61 S.Ct. at 466. If it has, the protection of the exemption does not apply.[1]

---

1 If a court finds that there has been an agreement between a union and a "non-labor group", the agreement may still be entitled to antitrust immunity under the "non-statutory" exemption. Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616, 622, 95 S.Ct. 1830, 1835, 44 L.Ed. 2d 418 (1975). Since both the "statutory" and "non-statutory" exemptions are based on judicial readings of the Sherman, Clayton and Norris-LaGuardia Acts, this choice of terminology seems unfortunate. See I Areeda & Turner, Antitrust (1978) §229 at 192.

Most employers qualify as a "non-labor group,"[2] and the court below considered whether or not there was any agreement, either explicit or tacit, between Equity and the producers to establish or police the franchise system. We do not believe the district court was clearly erroneous in finding that the

---

2 An exception is an employer in job competition with his employees, e.g., a bandleader who sometimes both leads a band and plays an instrument. American Federation of Musicians v. Carroll, 391 U.S. 99, 88 S.Ct. 1562, 20 L.Ed.2d 460 (1967).

collective bargaining agreement does not reveal any combination between Equity and the producers with respect to agents, Fed. R. Civ. P. 52(a), Meat Cutters v. Jewel Tea Co., 381 U.S. 676, 694, 85 S.Ct. 1596, 1604, 14 L.Ed.2d 640 (1965).

Appellants argue that the provision in the collective bargaining agreement that standard employment contracts include a space for the actor's agent's name, and another provision of the agreement that requires this line to be filled in, is evidence that the producers agree with Equity to help the union police its francnise system. We disagree. As the district court found, there was evidence that contracts were often executed leaving blank the line left for the agent's

name, and that, even so, Equity honored such contracts and did not take any action against members who worked under such contracts. The provision requiring that every line be filled in far antedated the appearance of the line for "name of agent." The district court was not clearly erroneous in concluding that Equity did not in fact require that this line be filled in.

The collective bargaining agreement aside, appellants argue that various statements made by Equity officials to union members and to producers are evidence of a combination between Equity and the producers with regard to agent franchising. We have examined each of the statements in the record adduced to support this point and we conclude that the district court's finding that they do not

demonstrate any such combination cannot be labeled clearly erroneous. Unilateral pronouncements by Equity such as that "only franchised agents may negotiate employment deals for Equity performers" are not proof of an agreement because they may mean no more than that Equity members are forbidden from dealing with unfranchised agents. Such a prohibition, of course, since it serves the union's self-interest is a matter of proper union concern and does not involve a non-labor group, is safe from antitrust scrutiny under the statutory exemption. United States v. Hutcheson, supra.

There is some evidence in the record that Equity sought the producers' cooperation in enforcing the franchise system during the 1975 negotiations between Equity, TARA and the producers. And

Equity officials did tell their membership that producers had an "obligation" to avoid using unfranchised agents. But such unilateral expressions, in the absence of any indication from the producers that they had agreed to cooperate or that they had accepted Equity's view of their "obligations," is not evidence from which the court was required to find that a "combination" had been formed. Our conclusion is also based on the fact that there was no evidence at trial that any producer had considered himself bound by the union's statements; nor did any producer testify that he had been pressured not to deal with unfranchised agents, or that he had reported unfranchised agents to the union.

But on the record in this case we discern a combination between the union and

individuals who appear as if they might be members of a "non-labor" group. These individuals are those agents who have agreed with the union to become franchised, and these agreements must be scrutinized to determine if they are agreements that would divest Equity's franchise system of the protection of the "statutory" exemption. In our view, they do not because the agents involved are a "labor group."

In American Federation of Musicians v. Carroll , 391 U.S. 99, 88 S.Ct. 1562, 20 L.Ed.2d 460 (1967), the Supreme Court identified the test for distinguishing a labor group from a non-labor group as "...the presence of job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and

the independent contractors. If such a relationship existed, the independent contractors were a 'labor group'..." 391 U.S. at 106, 88 S.Ct. at 1567, quoting 241 F.Supp. at 887. The above language is taken from the Carroll court's discussion of whether or not bandleaders in the "club date" field could be subjected to certain forms of union restrictions. Since the central holding in the case was that the fact that bandleaders sometimes performed as musicians meant that such restrictions were valid, most of the opinion deals with the "job or wage competition" branch of the disjunctive test quoted above. But the Carroll court also approved the musicians' union's restrictions on booking agents' commissions, which were enforced through a "licensing" system analogous to the "franchising" system at issue in the

case at bar, 391 U.S. at 116-17, 88 S.Ct. at 1572-73.

Unlike the bandleaders, the agents in Carroll were not in any kind of "job or wage competition" with union members. The court's sub silentio application of the statutory exemption therefore supports the view that the musicians and the booking agents were in a sufficient "economic interrelationship" to justify union regulation. Because of the vagueness of this term, however, we believe the matter calls for further explanation.

Most unions are in an "economic interrelationship" with the employers of their membership. When the union gains a wage increase, the employers give up corresponding amounts of money (though not necessarily corresponding profits, be-

cause labor costs can often be passed along to consumers). But such an "economic interrelationship" does not suffice to make an employer a "labor group", or even a "party to a labor dispute"; otherwise there would be no need for the "non-statutory" exemption, which was developed largely to provide an exemption for union agreements with employers. Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616, 622, 95 S.Ct. 1830, 1835, 44 L.Ed.2d 418 (1975). To choose a different example, there is an "economic interrelationship" between a labor union and the buyers of goods produced by the union members' employer. If, for example, steelworkers were to win a wage raise of enormous size, various users of steel products, such as automobile manufacturers, would be adversely affected. Yet a combination between the steel-

workers and an automobile manufacturer would not be entitled to the benefit of the statutory exemption because of this "economic interrelationship."

For purposes of this case, it is enough to note that the "economic interrelationship" test has never been used to immunize from antitrust challenge anything more than a union's effort to regulate parties, who, because of industry structure, stand athwart the current of wages paid by employers to union members; and that these efforts have been associated with attempts to defend the integrity of minimum wages. See, e.g., Adams, Ray & Rosenberg v. William Morris Agency, 411 F.Supp. 403 (C.D. Cal. 1976). In industries where it is necessary or customary for union members to secure employment through agents, and agents' fees

are calculated as a percentage of wages set by a collective bargaining agreement, such agents must be considered a "labor group" because the union cannot eliminate wage competition among its members without regulation of the fees of the agents.

Once it is determined that the union's actions have involved no combination with a non-labor group, it remains, under United States v. Hutcheson, supra, only to decide if the goal being pursued is within the area of the union's legitimate self-interest. In the case at bar, Equity, through its franchising system, seeks primarily to protect from encroachment a minimum wage in an industry where the maintenance of a minimum wage poses problems of particular intractability. The possibility that job-hungry actors will work through agents who take

excessive commissions is a matter of legitimate union concern. The goal of the agent restrictions is the elimination of wage competition, traditionally one of the most sacrosanct goals of national labor policy.

To this point, we have been concerned with the core of Equity's franchising system - the securing by the union of an agreement from the agents not to charge commissions on certain types of work obtained. A second aspect of the franchising system, under which the union charges a fee to agents who become franchised, is more troublesome. These fees ($200 for the initial franchise; $60 per year thereafter for each agent, and $40 for any sub-agent working in the office of another), are not segregated from other union funds. While the union argues that

they are necessary to pay the union's expenses in administering the franchise system, no evidence was presented at trial to show that the union's costs justified the franchise fees.

Clearly the union could not, legally, exact more from the agents than it needs to offset the costs of the franchising system. Such exactions would be unconnected with any of the goals of national labor policy which justify the antitrust exemption for labor. Nevertheless, this case in its present posture can best be disposed of by approving the fees as they stand today. There was testimony that at least one full-time Equity employee was engaged in updating lists of franchised agents and correlating contracts with these lists. There was also testimony that approximately 200 theatrical agents

or agencies are affected by the union practices under challenge. Assuming an average yearly charge of $60, Equity's franchising revenues would amount to approximately $12,000. Such a sum, plus initial franchise fees collected during the year, cannot be incommensurate with Equity's expenses in maintaining a full-time employee to administer the system. In such circumstances, a remand to the district court would not serve any useful purpose.

Affirmed.